2116.

SUPREME COURT OF THE UNITED STATES.

No. 191.

OLIVER CHACE, APPELLANT,

vs.

HENRY MARCHANT & AL., PARTNERS IN BUSINESS UNDER THE NAME AND STYLE OF ABBOTT RUN MANUFACTURING COMPANY, AND ELIZABETH B. KENNEDY.

APPEAL FROM THE CIRCUIT COURT U. S., FOR THE DISTRICT OF MAINE.

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At a circuit court of the United States, for the first circuit, holden at Newport, within and for the Rhode Island district, on the sixteenth day of June, (the fifteenth happening on Sunday,) A. D. 1851.

Present, the honorable Levi Woodbury, associate justice Supreme Court, United States; the honorable John Pitman, U. S. district judge for Rhode Island district; James M. Clarke, esq., U. S. district attorney for said district; George W. Jackson, esq., U. S. marshal for said district; John F. Pitman, clerk of circuit court.

Among other causes disposed of was the following:

Bill in equity.

OLIVER CHACE
vs.
HENRY MARCHANT et als.

Be it remembered, that, on the 15th day of October, A. D. 1844, the following bill was filed in the clerk's office of the circuit court of the United States, for the Rhode Island district, viz:

RHODE ISLAND DISTRICT, *sc:*

To the judges of the circuit court of the United States, for the district of Rhode Island.

Oliver Chace, of Fall River, in the county of Bristol, and commonwealth of Massachusetts, manufacturer, and a citizen of the State of Massachusetts, brings this his bill against Henry Marchant, of Smithfield, in the county of Providence, and State of Rhode Island, manufacturer, and a citizen of the State of Rhode Island, and Benjamin Fessenden, Milton S. Morse, both of Cumberland, in the county of Providence, and Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., all of the city and county of Providence, partners in business, under the name and style of the Abbott Run Manufacturing Company, and all citizens of the State of Rhode Island, and Elizabeth B. Kennedy, of Cumberland, in the county of Providence, and a citizen of the State of Rhode Island.

And therefore your orator complains and says, that he is seized and possessed in fee simple of several parcels of land situate at Valley Falls, in the towns of Cumberland and Smithfield, in the county of Providence and district of Rhode Island, which were, and are still, known as the Valley Falls Mill estate, together with three-fourths of the water of the Blackstone river, and all the rights and privileges belonging thereto; with all the factory, picker-house, dwelling-houses, trenches, water-ways and other improvements upon said land, or to the same belonging.

That your orator is entitled to use said water upon either or both sides of said river, as he may deem expedient.

That the parcel of your orator's land above mentioned, which is situated in the town of Smithfield aforesaid, is bounded and described as follows, to wit:

Thirty-four lots of ground in said Smithfield, which lots are numbered upon a plat of Valley Falls, made by Samuel B. Cushing and Richard S. Scott, as mill lots numbers three, four, five, six, and lots numbers twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-two, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, with the dwelling-houses thereon, and one lot which is part of lot number forty-two, and part of mill lot number one upon said plat, and bounded as follows, viz: Beginning at the Valley Falls turnpike road, at the point where said road intersects the north side of the trench leading to the old Stone mill; thence easterly, with the north side of said trench, to the east side of the old flume leading to the mill that was burned; thence northerly to the outside of the old foundation wall; thence easterly in a line with said old wall until this line intersects at right angles a line drawn southerly from the most easterly corner of the dwelling-house standing on lot number forty-two; thence northerly along that line until it intersects a line drawn twenty feet southward of the easterly corner of said house; thence westerly along that line until it intersects at right angles a line drawn twenty feet westward of the westerly corner of said house; thence northerly to a point forty feet from the Blackstone river at its ordinary state; thence westerly to said turnpike, at a point fifty feet south of the abutment wall of the bridge; thence along said road to the place of beginning. Also one other lot of land, with a dwelling-house thereon, in said Smithfield, formerly the property of Thomas Bates, bounding easterly on said turnpike, on which it measures sixty feet, and being of the same width, and one hundred feet in depth.

That your orator is about making improvements upon the above land, and designs to use one-quarter part of the water of the Blackstone river in Smithfield.

That Henry Marchant, of North Providence, in said county of Providence, manufacturer, and a citizen of the State of Rhode Island, is the owner of a certain lot of land situate in said Smithfield, together with the factories, dwelling-houses, and other buildings, and water privilege, and bounded and described as follows, to wit: Lots numbered one, two, seven, eight, nine, nineteen, twenty, twenty-one, thirty-seven, forty, forty-two, forty-three, forty-four, forty-five, forty-six, with the two stone factories and all other buildings thereon standing, and one undivided fourth part of all streets, gangways, and water-ways thereon, according to a plat of said premises surveyed in June, 1830, by Richard S. Scott, and platted by S. B. Cushing, which plat is certified by said Scott; together with one-fourth of the water of the Blackstone river, and all the rights and privileges belonging thereto.

That there is a trench now subsisting leading from said Valley Falls pond to the mills of said Marchant and to the land of your orator, upon which your orator proposes to erect a mill, said trench being jointly owned by your orator and said Marchant.

That the parcel of your orator's estate, situate in the said town of Cumberland, is bounded and described as follows: One certain parcel of land, with the factory, picker-house, dwelling-houses, and other improvements thereon, bounded as follows, viz: Beginning at the southeasterly corner of said lot on the Blackstone river, where it bounds on the southwesterly corner of the Abbott Run estate; thence bounding on said estate, north fifty degrees east, about six hundred and fifty feet, until it intersects the line known as the north line of the Hatch purchase; thence south seventy-seven and a half degrees west about four hundred and seventy-five feet, to land of Jeremiah Whipple; thence south one degree west about sixty-five feet; thence north eighty-seven degrees west about sixty-five feet to a highway; thence south three and a half degrees west, bounding upon said highway about three hundred feet, to a point fifty feet north of the northwest corner of the Stone factory upon said lot; thence south eighty-one degrees west about one hundred and fifty feet; thence northerly parallel with the Valley Falls turnpike one hundred feet; thence westerly at right-angles with said turnpike one hundred feet to said turnpike; thence by said turnpike to the river, which river is the southerly bound of this lot. Also one other parcel of land, consisting of three house lots, bounded as follows: Beginning at the northwest corner of the Valley Falls turnpike bridge; thence northerly on said turnpike about three hundred [and] sixty-seven feet; thence westerly at right-angles with said turnpike one hundred and twenty-two feet; thence turning a right-angle and running to the Blackstone river, which is the southerly boundary of this lot; together with the dwelling-houses and other improvements thereon.

That your orator designs to use one-half of the water of the said Blackstone river, in Cumberland, in the working of said Valley Falls mills.

And your orator further charges, that there is no partition of the water of the said Blackstone river between the said Henry Marchant and your orator, and no apertures or gateways established, giving to each of the said proprietors of the stream his just and exact proportion thereof, but said Marchant is enabled to, and does draw, as the gates and gateways are now established, a much larger portion of the stream than he is entitled to, to your orator's great damage.

That the said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., partners under the name of the Abbott Run Manufacturing Company, are the owners of a certain real estate, cotton mill, and water power, in said Cumberland, adjoining to said above described estate of your orator in said Cumberland, and known as the Abbott Run estate.

That said Benjamin Fessenden, Milton S. Morse, Crawford Allen,

George C. Nightingale, and Sullivan Dorr, jr., are further possessed of a right and privilege, which right and privilege are correctly defined and described in a certain deed from Crawford Allen to Benjamin Fessenden and Milton S. Morse, bearing date the 27th day of July, 1833, in the words following, to wit: "A right and privilege to make, maintain, and keep up a trench or flume from the said Valley Falls dam through and across land at the time of said grant belonging to Crawford Allen, in such way and manner as would do him, said Allen, the least damage, which trench should end in the said Abbott Run mill pond or flume, and be constructed of such depth and breadth as to carry into the said Abbott Run pond or flume as much water as might be sufficient to enable the owners of the said Abbott Run mills to carry or run three thousand cotton spindles, one half thereof throstle, and the other half thereof mule spindles, with the necessary preparation and looms in the mills on the said estate, so that in case of any deficiency of water in the Abbott Run river to drive that number of spindles, when the dam should remain at its present height, then the owners of the said Abbott Run mills should have the right and privilege of making up such deficiency of water by drawing through the aforementioned trench a supply from the said Valley Falls pond."

That the said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., have not constructed any trench in conformity with the provisions of said deed; but they, the said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., have cut a gateway into the lower part of the flume of your orator's Valley Falls mill, and now draw the water of said pond for the use of said Abbott Run mills through the said trench and flume belonging to your orator as aforesaid, without the consent of your orator, and to his great loss and injury. And your orator further charges that the said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., combining and confederating together to deprive your orator of all use and benefit of his said privilege, to draw the water of said Valley Falls pond, nights and at unusual hours, without the consent of your orator, and to his great loss and injury.

That the said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., are entitled to draw "as much water as may be sufficient to enable the owners of the said Abbott Run mills to carry or run three thousand cotton spindles, one half thereof throstle and the other half thereof mule spindles, with the necessary preparation and looms in the mills on the said estate, so that in case of any deficiency of water in the Abbott Run river to drive that number of spindles when the dam shall remain at its present height, then the owner of the said Abbott Run mill shall have the right and privilege of making up such deficiency of water," &c.

That the said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., have been, and still are, in the habit of drawing down the water in said Abbott Run

pond so far below the level of the said Abbott Run dam as to thereby require a much greater amount of water to be drawn from the said Valley Falls pond to enable the said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., to obtain the same amount of water power to which they are entitled.

And your orator further states unto your honors, that the enjoyment of the said water of the said Blackstone river, in common with the said Marchant, is liable to difficulties and controversies, and is attended with great inconvenience to your orator; and your orator has therefore applied to the said Marchant to consent to a partition of the said water power, and had well hoped that he would have complied with so reasonable a request; but now, so it is, the said Henry Marchant refuses to consent thereto unless compelled by a judgment at common law, or by a decree of this honorable court.

And your orator has called upon said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., in a friendly manner, and requested them to desist from drawing water through the trench and flume of your orator, which reasonable request of your orator they have utterly refused to comply with; all which actings and doings are against equity and good conscience, and tend to the manifest injury of your orator in the premises.

That the said Elizabeth B. Kennedy is the lessee of an unexpired term, to wit, of two years from the first day of April, A. D. 1843, of a part of the mill and water power belonging to your orator, to wit, of a part of the Stone factory belonging to your orator, situate at said Valley Falls, in said Cumberland, with a part of the small stone building lying east thereof, and a part of the dwelling houses belonging to said factory, and also a portion of the water power of the Blackstone river at said Valley Falls, being the same part of said buildings and water power which have been heretofore and are now occupied by said Elizabeth B. Kennedy. In tender consideration whereof, and inasmuch as your orator is remediless at and by the strict rules of the common law, and can have adequate remedy and relief only in a court of equity, where matters of this and the like nature are properly cognizable and relievable.

To the end, therefore, that a decree may be passed by this honorable court, ordering and directing that apertures, gates, and gateways be established for the privileges aforesaid of the said Henry Marchant and your orator in Smithfield aforesaid, on the same level and of such a width, and be regulated in such a manner as to give to your and said Marchant each one-quarter part of the water of the said Blackstone river, and no more.

And that a decree may be passed by this honorable court, ordering and directing that a common aperture, gateway, and gate be established for the privileges aforesaid of the said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., and your orator in Cumberland aforesaid, at the said Valley Falls

dam, of sufficient size to discharge one-half of the said Blackstone river. That said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., may be restrained by injunction from draining the water of the said Valley Falls pond through the trench and flume of your orator.

That said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., may be restrained by injunction from drawing down the water in the said Abbot Run mill pond or flume to any unusual depth below the level of the said Abbott Run dam, and from drawing more water than they are entitled to draw as defined in said deed.

And that each and all of the parties to this bill may be restrained by injunction from drawing said water nights or at unusual times.

That in establishing apertures, gateways, and gates, according to the several rights of the said parties, there may be reserved the power of removing said apertures, gateways, and gates, or of altering them in case the interest of either of the said parties increases or diminishes by purchase, lease, sale, or otherwise, or in case either of said parties wishes to use all or any part of the water to which he is entitled on another lot than that on which it is now used, or in a different part of the same lot; but in all cases the whole length of the apertures shall be neither increased or diminished, and the apertures shall be on levels that may be established for the places on which they may be removed, and shall give to the owner or lessee of such privilege the same proportion of the river which shall be discharged by the apertures as they shall be established by the decree of this court.

And that it be referred to a master to divide said Blackstone river, and to erect gateways in conformity with said decree; and the said Henry Marchant, his executors and assigns, agents and servants, may be perpetually enjoined, each and all, from draining or using more of the water of said river than shall be allowed and apportioned to them respectively by the apertures or gateways aforesaid. And that the said Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., may be perpetually enjoined and restrained from drawing any of the water of said Valley Falls pond until they shall have constructed a trench from said Valley Falls dam to said Abbott Run pond or flume, in conformity with the provisions of said deed. And that your orator may have such other and further relief in the premises as to your honors may seem meet and agreeable, and as the circumstances of his case may require.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, and directed to the said Henry Marchant, Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, Sullivan Dorr, jr., and Elizabeth B. Kennedy, commanding each and all of them, under a certain penalty therein to be named, to be and appear at the clerk's office of this honorable court on the next rule day thereof, being the fourth day of November, A. D. 1844, then and there to answer the

premises, and to stand to and abide such order and decree therein as to your honors shall seem meet, and shall be agreeable to equity and good conscience.

OLIVER CHACE,
By GREENE & LARNED,
His solicitors.

Whereupon the following subpœna issued:

Subpœna.

RHODE ISLAND DISTRICT, *sc:*

The President of the United States of America, to Henry Marchant, of Smithfield, manufacturer; Benjamin Fessenden and Milton S. Morse, both of Cumberland; Crawford Allen, George C. Nightingale and Sullivan Dorr, jr., all of the city of Providence, manufacturers, and partners in business under the name and style of the Abbott Run Manufacturing Company; and Elizabeth B. Kennedy, of Cumberland, all in the county of Providence, in the Rhode Island district, and citizens of the State of Rhode Island and Providence Plantations, greeting:

For certain causes offered to our circuit court for the first circuit, within and for the Rhode Island district, in chancery, we hereby command and strictly enjoin you and each of you, that, laying aside all other matters and things, and notwithstanding any other excuse, you and each of you personally appear at the clerk's office of said court in Providence, on Monday, the fourth day of November next, being the rule day of said court, and then and there full, true, and perfect answer make, upon your several corporal oaths, to the bill of complaint of Oliver Chace, of Fall River, in the county of Bristol and Commonwealth of Massachusetts, manufacturer, and a citizen of the State of Massachusetts, now filed of record in the clerk's office of said court, and to do and receive whatever our said court shall order against you in the premises in this behalf. And hereof fail not under the pains and penalties that may accrue in consequence of the neglect thereof.

And the marshal of said Rhode Island district, or his deputy, is hereby commanded to make service of this writ by reading the same to the said Henry, Benjamin, Milton S., Crawford, George C., Sullivan, and Elizabeth B., or by leaving a true and attested copy hereof at their several last and usual places of abode twenty days before the rule day aforesaid.

Witness the hon. Roger B. Taney, our chief justice, at Providence, this fifteenth day of October, A. D. 1844.

JOHN T. PITMAN, *Clerk.*

Memo. The appearance of the respondents in the suit is to be entered in the clerk's office on or before the return day of this writ, otherwise the bill may be taken pro confesso as against those not appearing.

RHODE ISLAND DISTRICT, *sc.*

OCTOBER 15, 1844.

Made service of the within writ by leaving a true and attested copy hereof at the last and usual place of abode of the within named Henry Marchant, Benjamin Fessenden, Milton S. Morse, George C. Nightingale, Sullivan Dorr, jr., and Elizabeth B. Kennedy; and delivered in hand of Crawford Allen a true and attested copy hereof, all as commanded.

SYLVESTER HARTSHORN,
U. S. marshal.

Fees of service, - -	$14 00
of copies, - -	3 50
Travel 10 miles, - -	1 00
	$18 50

And on the rule day in November following, appearance was entered as follows:

RHODE ISLAND DISTRICT, *sc:*

Circuit court of U. S. for Rhode Island district. Rule day in November, 1844.

In case—

OLIVER CHACE
vs.
OLIVER MARCHANT et al. } In equity.

I hereby enter in said case the appearance of Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., manufacturers, partners in business under the name and style of the Abbot Run Manf'g Co., respondents to said bill.

SAMUEL AMES,
Solic. for Abbott Run Manf'g Co.

And on the 31st day of December, A. D. 1844, was filed in the clerk's office the following:

Answer of C. Allen and others.

RHODE ISLAND DISTRICT, *sc.*

Circuit court of the United States, for the district of Rhode Island, November term, A. D. 1844.

OLIVER CHACE
vs.
HENRY MARCHANT et al. } In equity.

The joint and several answers of Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingle, and Sullivan Dorr, jr., parties in business under the name and style of the Abbott Run Com-

pany, and of the defendants to the bill of complaint of Oliver Chace, complainant.

These defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or to so much thereof, or to such parts thereof, as these defendants are advised is material for them to make answer unto, answer and say: That they admit that the said Oliver Chace, is seized and possessed of the Valley Falls estate on the Blackstone river, so called, with the right to use three quarters of the water of the said river, and that the said defendant, Henry Marchant, is entitled to use the other quarter of said river, the right of the said Oliver Chace being subject, however, to the right of these defendants as owners of the Abbott Run estate to use so much of the water of the said river, out of the portion or part thereof belonging to said Oliver Chace as owner of the Valley Falls estate, as will enable them to run three thousand spindles, as set forth in the extract from the deed of Crawford Allen to said Fessenden and Morse, set forth in said bill of complaint; but these defendants disclaim all interest in the question of partition of said water between the said Chace and Marchant, and all liability to any expense therefor, inasmuch as whatever may be the particular mode in which said water is divided, between said Chace and Marchant, the water set off to said Chace is subject to the right of these defendants, to use so much thereof as will enable them to run at all times three thousand spindles at the said Abbott Run estate, as set forth hereinbefore and in the extract of a deed in said bill of complaint.

And these defendants further answering say, that a long time previous to the acquisition by said Oliver Chace of any title or possession of said Valley Falls estate, one William Harris was the owner and possessor both of the said Valley Falls estate, and with one Crawford Titus of the Abbott Run estate, owning however, only a right to use one-twelfth part of the water of said Blackstone river at his said Valley Falls estate; and being so the owner and possessor, constructed a trench leading from the end of the flume of the said Valley Falls mill, as the said flume then existed to the flume of the said Abbott Run mills, by which he might and did use so much of the water of the said Blackstone river by him owned, as was necessary to enable him in dry seasons to supply the deficiencies of water from the Abbott run, so called, at his said Abbot Run estate, said trench being constructed by said William Harris, wholly over land by him owned, or land which he had previously procured the license of the owners thereof, to use for that purpose perpetually; that by subsequent purchase from the said William Harris, and from incumbrances on said estates, and others, the said Crawford Allen, subsequently and long prior to the ownership of the said Oliver Chace, became sole owner and occupier of the said Valley Falls estate, and of the said Abbott Run estate, together with a right to use three-quarters of the water of the said Blackstone river on either or on both

sides of said river as he should deem expedient; that whilst sole owner and occupier, the said Crawford Allen by deeds bearing date the 27th day of July, 1833, conveyed to said Milton S. Morse one undivided half, and to the said Benjamin Fessenden one undivided quarter, of the said Abbot Run estate, with the right of using the water of the Blackstone river at said Abbot Run mills, as set forth in the extract from the deeds of the said Crawford Allen to said Morse and Fessenden in said bill of complaint, retaining to himself, the said Crawford Allen, the other undivided quarter of said Abbot run estate and privilege; that during the whole time that said Crawford Allen was the sole owner of the said Abbott run estate, he continued to use the water of the said Blackstone river at his said Abbott Run mill through the said trench constructed as aforesaid by the said William Harris, whenever he needed the same; that at the time of executing said deeds of conveyance by the said Crawford Allen to the said Morse and Fessenden of the undivided portions of said Abbott Run estate aforesaid, with the privilege of using the water of the Blackstone river as aforesaid, no change except as to degree and limit of quantity was by them, the said Crawford Allen and the said Morse and Fessenden, contemplated in the use of the water of Blackstone river at the said Abbott Run mill, but it was mutually supposed that the said water would continue to be drawn from the end of the flume of the said Valley Falls mill as it had heretofore been; the said flume being considered by the parties to said deed as but an extension of the pond of the Valley Falls mill estate; and that the said Abbott Run Company, consisting of said Milton S. Morse, the said Benjamin Fessenden and the said Crawford Allen, continued to use the water of the Blackstone river through the trench aforesaid, constructed by the said William Harris at the said Abbott Run mills according to the grant in said deeds from the said Allen to said Morse and Fessenden, as in strict compliance therewith, until some time in the month of December, A. D. 1836; that just previous to the period last aforesaid, the new mill of the said Crawford Allen on the said Valley Falls estate approaching its completion, and in anticipation of the cutting down or lowering of the Valley Falls dam in consequence of its flowing back water upon mill-owners above, against the rights of said mill-owners, the subject of the mode in which the Abbott Run Company should exercise their right to use the water of the Blackstone river, under their grant aforesaid, from the said Crawford Allen, became a subject of discussion between the said Morse and Fessenden, on the part of the said Abbott Run Company and the said Crawford Allen as the owner of the Valley Falls Mill estate; it being obvious to them, that if, as was contemplated, the Valley Falls dam should be lowered, the old trench constructed by the said William Harris for that purpose would be insufficient to convey the water from the Valley Falls flume to the Abbot Run flume as it had theretofore done, so as to enable the the said Abbott Run Company to enjoy the privilege of using the water of the Blackstone river under their grant aforesaid; that the said Milton S. Morse and the said Benjamin Fessenden, on the part of the said

Abbott Run Company, were at that time not unwilling to take their water from the Blackstone river under their grant aforesaid directly from the pond (proper) of the Valley Falls mill, conducting it in a wooden trench from said pond running on the south side of said Valley Falls mill, instead of widening and deepening at great expense the trench in the hill side on the north side of said Valley Falls mill from the flume of said mills to the Abbott Run flume, constructed by the said William Harris as aforesaid; it being agreed on all sides to be impracticable, unless at enormous expense, to dig a new trench directly from the pond (proper) of the Valley Falls mill to the Abbott run flume to run on the north side of said Valley Falls mill on account of the height of the intervening land; that the said Crawford Allen objected to the Abbott Run Company taking their water directly from the Valley Falls mill pond in a wooden trench to run on the south side of the said Valley Falls mill, as it would darken the lower windows of the said Valley Falls mill, on the south side; and that thereupon, in the month of December, A. D. 1836, the said Abbott Run Company, with the full license, consent, and approbation of the said Crawford Allen, then sole owner of the said Valley Falls mill estate, and of all the land intervening between the end of the Valley Falls mill flume and the said Abbott run mill estate, commenced widening and deepening the trench constructed as aforesaid by the said William Harris, from the end of the Valley Falls flume to the Abbott Run flume, as the mode finally agreed upon in which the said Abbott Run Company or estate should take, under the deeds from the said Crawford Allen to the said Morse and Fessenden, the water from the Valley Falls mills pond for use at the Abbott Run mill; that the said Abbott Run Company, under said parol license, from an agreement with the said Crawford Allen, then sole owner of the said Valley Falls mill estate, did widen and deepen the said trench, theretofore cut by the said William Harris, as aforesaid, at great expense, to wit, at the expense of about three thousand dollars, and that the said Crawford Allen, as owner of the Valley Falls mill, constructed at his sole expense the gate at the end of the Valley Falls flume through which the said Abbot Run Company were to, and did, draw their water from the Valley Falls mill pond under their grant aforesaid; that said Abbot Run Company have ever since continued, as they had good right, to draw so much water from the Blackstone river as they were entitled to under the grant aforesaid, through said trench so by them constructed with the full license and agreement of the said Crawford Allen, then sole owner of the said Valley Falls mill estate, and through the gateway at the end of the flume of the said Valley Falls mills so by said Allen constructed for that purpose; that said Crawford Allen continued sole owner of said Valley Falls mill estate and owner of one undivided quarter part of said Abbott Run mill estate, until the fifteenth day of May, A. D. 1837, when he conveyed the same in trust with power of sale to Isaac Brown, Philip Allen, and Zachariah Allen, as his trustees; that said trustees, subsequently, at public auction sold said

Valley Falls estate to the said Oliver Chace, the complainant, in said bill of complaint, who thus derives his title thereto from the said Crawford Allen; that said trustees sold also the undivided quarter of the said Abbott Run estate, to them conveyed as aforesaid by said Crawford Allen, to the said Milton S. Morse and the said Benjamin Fessenden, who subsequently, to wit, on the twenty-first day of June, A. D. 1843, in consideration of the sum of fifteen thousand dollars, sold the same to the said Crawford Allen, the said George C. Nightingale and the said Sullivan Dorr, jr., in company, under the name and style of C. Allen & Co., reciting in their said deed to said C. Allen & Co. the grant of water to said Morse & Fessenden, under their deed aforesaid from the said Crawford Allen; and that by virtue of said grant, conveyance, and license, executed as aforesaid, these defendants, as the said Abbott Run company and owners of the said Abbott Run estate, with all the water power and privileges thereunto appertaining, have continued to and do now draw their water from the Blackstone river, through said gateway and trench so constructed as aforesaid, as far [as] they can, and as they are well entitled to do.

And these defendants further answering utterly deny "that they have cut a gateway into the lower part of the flume of the said Valley Falls mill, and now draw the water of said pond for the use of said Abbott Run mills, through the trench and flume belonging to said Oliver Chace, without his consent, and to his great loss and injury," but aver that said gateway was cut by said Crawford Allen, when sole owner of said Valley Falls mill estate, to enable the said Abbott Run estate to enjoy its privilege of water from the Blackstone river, under said grant and license executed as aforesaid, and according to their right, they have drawn said water from the flume of said Oliver Chace, through said gateway since the said Oliver Chace became the owner of the said Valley Falls estate, as theretofore the owners of the said Abbott Run estate had been accustomed to do; that the said gateway in the flume of the said Valley Falls mill and the trench leading therefrom to the flume of the said Abbott Run mill is the same gateway and trench constructed by the said Crawford Alten, and by him licensed as aforesaid, when sole owner of the said Valley Falls estate, and existing at the time of the purchase of the said Valley Falls estate by the said Oliver Chace; and that said Oliver Chace, at the time of his said purchase, well knew of the existence of the same, and purchased said Valley Falls estate, subject to the right of the said Abbott Run company, or of the owners of said Abbott Run estate to use the same for the purpose of drawing their water from the Blackstone river, and at a price proportionate to the said right of the said Abbott Run company, and the disadvantage thereof to the said Valley Falls mill estate.

And these defendants fulther answering admit, that in dry seasons of the year, when alone they have occasion to use the water from the Blackstone river, they are accustomed to draw the same through the said gateway and trench in the night times and on Sundays, when the said Valley Falls mills are not running, for the purpose of enjoying

their right aforesaid to use the water of the Blackstone to their own advantage and with the least injury to the said Valley Falls mills; that in this way they save the water, if any, which would otherwise run over the Valley Falls dam to waste, in their own pond, for use in the succeeding days, and without injury to the said Valley Falls mills; for they aver that there is a free communication for water between the pond of the Abbott Run mills and the pond of the Valley Falls mills, through said gateway, where the gate is hoisted, and the said trench and the flume of the said Abbott Run mills; and that the dam of the said Abbott Run mill pond is about eleven inches higher than the dam of the Valley Falls mill pond, whereby, when the Abbott Run mill pond is filled through said gateway trench and flume, no water is wasted over the Abbott Run dam until the water so accumulates in the Valley Falls mill pond as first to run over the dam thereof; that, except in very low times for water, this mode of drawing the water is decidedly the most advantageous mode for the Valley Falls mill, in which the Abbott Run mill could exercise its rights aforesaid; that it obviates the necessity of both mills, in the day time, drawing rapidly down the head of water in the flume of the Valley Falls mill, to the injury of both, as they would do if the Abbott Run pond was not filled in the night time and on Sundays, and saves the water, that would otherwise run to waste over the Valley Falls dam; that said mode of drawing the water in the night and Sundays into the Abbott Run pond, is necessary to enable these defendants to enjoy their right of water from the Blackstone river; that the said gateway and trench would not otherwise deliver to them the water to which they are entitled; that in the lowest times of water in the said Blackstone river the mode of filling their pond, in the night time and on Sundays, from the said Valley Falls pond through said gateway and trench, practised by these defendants, is not disadvantageous to the said Valley Falls mill, as it is the right of these defendants to take as much water from the Valley Falls pond, through said gateway and trench, as may be sufficient to enable them to run three thousand cotton spindles; one-half thereof mule spindles, and *and* the other half throstle spindles, with the necessary preparation, and looms in the mills of said Abbott Run estate, in case of any deficiency of water in the Abbott Run river to drive that number of spindles, when or so long as the Abbott Run dam should remain at the same height as on the twenty-seventh day of July, A. D. 1833.

And these defendants further answering say, that the said Abbott Run dam remains at the same height that it was at the time last aforesaid mentioned, and explicitly deny that they, or any persons by their authority or to their benefit, have ever drawn from said Valley Falls pond more water than was necessary to enable them to run three thousand spindles, half throstle and half mule spindles, with the necessary preparation and looms, at their said Abbott Run mills, or that they have drawn the water from the said Valley Falls pond through said gateway and trench in a wasteful manner, [at] nights and at unusual hours, to the loss and injury of said Oliver Chace; but, on the con-

trary, aver, that they have exercised their right of drawing water from said pond according to their grant and license aforesaid, in the mode least injurious to the said Oliver Chace, consistently with their rights aforesaid.

And these defendants deny all unlawful confederacy and combination in the said bill charged; without that, that any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct; and humbly pray to be hence dismissed, with their reasonable costs and charges in that behalf most wrongfully sustained.

BENJAMIN FESSENDEN,
MILTON S. MORSE,
CRAWFORD ALLEN,
GEO. C. NIGHTINGALE,
SULLIVAN DORR, JR.

SAMUEL AMES,
Solicitor for Respondents.

RHODE ISLAND DISTRICT, *sc.*

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, December 31, 1844.

Then personally appeared Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale and Sullivan Dorr, jr., subscribers to the foregoing answer, and severally made oath that the facts and statements therein contained were true and correct, according to the best of their knowledge and belief. Before me,

JOHN T. PITMAN, *Clerk.*

$1 25 paid by S. Ames.

And on the 18th of April, 1845, was also filed the following

Answer of Henry Marchant,

In the case—

OLIVER CHACE
vs.
HENRY MARCHANT and others.

The several answer of Henry Marchant, one of the defendants to the bill of complaint of Oliver Chace against the said Henry Marchant et al., for answer thereto, or to so much thereof as he is advised by counsel is necessary or material for him to answer, answereth and saith, that he admits that the said Oliver Chace is the owner of three undivided fourths parts of said Blackstone river, as set forth in said bill of complaint; and that he believes that he is also the owner of the lands

and buildings on both sides of said river, as is set forth in said bill; and he also believes that he is entitled to use the water to the extent of his title on either or both sides of said river, as is also stated in said bill of complaint.

The said Henry Marchant also admits that he is the owner and occupier of the remaining fourth part of said river, and of the lands and buildings as set forth in said bill of complaint; but he denies that he is now using, or has occupied or used, more than one-fourth of the water of said river.

The said Henry Marchant further answering says, that he admits that Crawford Allen was the owner of a portion of the water power of said river, and of the lands, mills, and estates on the Cumberland side of said river, now owned by the said Oliver Chace; and that on the 27th day of July, A. D. 1833, the said Crawford sold and conveyed to the owners of the Abbot run estate, so called, the privilege and right to use a portion of the water, sufficient to carry three thousand spindles in the mills and buildings belonging to said Abbott run estates, when added to the water of said Abbott run.

The said Henry Marchant further states that, at and before the time of said conveyance, he was the owner of the estntes, lands, buildings, &c., on the opposite side of said river, and of one-fourth of the water power of said river, and in the actual possession and use of the same; and that he did not then, and has never since, consented to the use of said water by the owners of said Abbott run estates, nor in any manner admitted the right of the said Crawford Allen, as owner of a portion of said water power, to authorize and empower said owners of said Abbott run estates to divert the waters of the Blackstone river from and out of the bed of said river into the bed of a separate and distinct river, to be there used in mills erected upon that separate river, thus diverting a large portion of the waters of said Blackstone river out of and from the bed of said river, and around the lands, mills, and estates or this respondent.

This respondent also states and insists that the mode of using the water drawn from said Blackstone river into the pond of the owners of said Abbott run estates has been and now is extremely injurious to the rights of this respondent, inasmuch as they draw much larger quantities of water than by the terms of their contract with the said Crawford Allen they were entitled to, (supposing said contract to be valid and binding;) and also, that, by drawing said water from the Blackstone river during the night season, and at other unusual seasons, they have materially lessened the value of this respondent's interest in said Blackstone river. While this respondent, therefore, unites with the said Oliver Chace in his desire to have said water divided, three-fourths thereof to the said Chace and one-fourth to the said respondent, he protests against the use of any portion of said Blackstone river by the said owners of the Abbott run estates, such use being illegal, without right or title, and extremely injurious to this respondent's rights in said Blackstone river.

HENRY MARCHANT.

PROVIDENCE, *sc:*

PROVIDENCE, *April 18th*, 1845.

Then the above signed Henry Marchant made oath that the facts set forth in the aforegoing answer, as being of his own knowledge, are true; and that those which are stated as facts, of which he has been informed, are true to the best of his knowledge and belief. Before me,

CHARLES HOLDEN, Jr.,
Justice Peace.

Deed annexed to foregoing answer.

To all people to whom these presents shall come:

Whereas on the first day of June, A. D. one thousand eight hundred and thirty-one, L. H. Arnold, S. Fowler Gardner, and James F. Simmons, in their capacity as commissioners of the Farmers' and Mechanics' Bank, made and executed their certain deed to Henry Marchant, of North Providence, in the county of Providence and State of Rhode Island, therein and thereby conveying to him, the said Henry Marchant, his heirs and assigns forever, all the right, title, interest, property, claim, and demand of Abraham and Isaac Wilkinson, as mortgagors, and of the Farmers' and Mechanics' Bank as mortgagees, and as attorney of the said Abraham and Isaac Wilkinson, in and to the following lands, factories, dwelling-houses and other buildings, machinery and water privilege, at a place in Smithfield, called Valley Falls, to wit: lots numbered one, two, seven, eight, nine, nineteen, twenty, twenty-one, thirty-seven, forty, forty-two, forty-three, forty-four, forty-five, forty-six, with the two factories and all other buildings thereon standing, and one-quarter of the Blackstone river, and one undivided fourth part of all the streets, gangways, and waterways, to be forever kept open and unencumbered for those purposes, according to a plat of said premises, surveyed in June, 1830, by Richard S. Scott, and platted by S. B. Cushing, which plat is certified by said Scott August 11, 1530, together with all the cotton machinery, tools, apparatus, and furniture to said bank belonging, and in use at said factories; which said deed is on record in said town of Smithfield, in the registry of deeds, in book number seventeen, page 432.

And whereas the said deed contained the following covenants of warranty, to wit: "And the said Farmers' and Mechanics' Bank, for themselves, their succcessors and assigns, and for and in behalf of the said Abraham and Isaac Wilkinson, their respective heirs, executors, administrators and assigns, do covenant with the said Henry Marchant, his heirs and assigns, that they have good right to sell and convey the same, and that they will warrant and defend the same to him, the said Henry Marchant, his heirs and assigns, forever, against the lawful claims of all persons claiming by, through, or under said bank."

And whereas doubts have arisen as to the authority of said commissioners to insert in the aforenamed deed the afore recited covenants of

warranty; and whereas by an act passed by the general assembly of the State of Rhode Island, passed at their October session, A. D. 1833, the corporate name of said bank was changed to that of "The Phœnix Bank of Providence"—

Now, therefore, know ye, that we, "The Phœnix Bank of Providence," for the purpose of quieting all doubts and questions relative to the aforesaid conveyance, and for and in consideration of the sum of one dollar, to us paid by the aforenamed Henry Marchant, the receipt whereof is hereby acknowledged, do by these presents remise, release, and forever quit claim, unto him, the said Henry Marchant, his heirs and assigns forever, all the right, title, interest, property, claim, and demand which we now have, or of right ought to have, or claim in and to the premises named and described in the aforesaid deed.

To have and to hold the same to him, the said Henry Marchant, his heirs and assigns forever, subject, however, to all mortgage deeds heretofore made by said Henry Marchant to the Farmers' and Mechanics' Bank, or the Phœnix Bank of Providence

And we, the Phœnix Bank of Providence, do hereby ratify and confirm the afore recited covenants, as contained in the afore named deed, made and executed by said commissioners, and for ourselves, our successors and assigns, do covenant, with the said Henry Marchant, his heirs and assigns, that we will warrant and defend the afore named premises to him, the said Henry Marchant, his heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through, or under us, excepting the afore named mortgage deeds.

In testimony whereof we, "The Phœnix Bank of Providence," have caused these presents to be signed by James F. Simmons, our president, and agent for this purpose specially appointed, and our corporate seal to be hereunto affixed, this second day of February, A. D. one thousand eight hundred and thirty-seven.

JAMES F. SIMMONS.

Signed, sealed, and delivered in presence of—
SAMUEL F. MAN,
EDWARD WALCOTT.

PROVIDENCE, *sc.*

In Providence, this third day of February, A. D. 1837; then James F. Simmons personally came and appeared before me, and acknowledged the preceding instrument, by him signed as president of "the Phœnix Bank" in Providence, to be his free and voluntary act and deed, and the free and voluntary act and deed of "the Phœnix, in Providence."

HENRY MARTIN, *Public notary.*

The following is a copy of a vote of the stockholders of the Phœnix Bank of Providence, (late Farmers and Mechanics' Bank,) passed at their meeting held December 22, 1835.

"Voted, that the president of the bank, by the advice of the directors, have power to execute deeds for the sale of real estate belonging to the bank, whenever they may deem it expedient."

True copy of record.

Witness: BENJA. WHITE, *Cashier.*

The following is a copy of a vote passed by the board of directors of the Phœnix Bank of Providence, at their meeting held February 2, 1837:

"Voted, that we advise our president, James F. Simmons, to execute a quit claim deed to Henry Marchant, of such part of Valley Falls estate as is described in a deed made by the commissioners of the late Farmers and Mechanics' Bank, to said Henry Marchant, dated on the first day of June, A. D. one thousand eight hundred and thirty-one, saving and excepting all mortgages heretofore made by said Henry Marchant to said Farmers and Mechanics' Bank, or to the Phœnix bank of Providence."

True copy of record.

Witness: BENJA. WHITE, *Cashier.*

Received for record December 9, 1844, at 4 o'clock, p. m., and recorded December 13, 1844, in Smithfield registry of deeds' book, No. 22, page 388, by

G. S. BARNES, *T. clerk.*

At the June term, 1845, of said court, was entered a decree, as follows:

Decree.

United States circuit court, June term, A. D. 1845.

RHODE ISLAND DISTRICT, *sc.*

OLIVER CHACE
vs. } In equity.
OLIVER MARCHANT et al.

This cause came on to be heard at the June term, A. D. 1845, of the court, upon the bill and the answers of all the defendants, except Elizabeth B. Kenedy, whose interest in the premises has expired since the filing of this bill, and counsel being heard thereon, it is ordered, adjudged, and decreed, by consent of parties, that partition be made of the waters of said Blackstone river, in the pleadings named, among the respective proprietors thereof, in said bill mentioned, according to the proportion of said river which each proprietor owns, in conformity to the prayer of the complainants' said bill, and that apertures be established for all the privileges aforesaid in said bill mentioned, on such a level, and of such a length, and be regulated in such a manner, as to give to each proprietor of said river his proportion thereof, and no more,

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to wit: To the said Oliver Chace one-quarter part of said river, to be used on the Smithfield side of said river, and to the said Henry Marchant one-quarter part of said river, also to be used on the Smithfield side of said river; and to the said Oliver Chace, Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale, the remaining half part of said river, to be used on the Cumberland side of said river, according to their respective rights and interests therein.

It is further ordered, adjudged, and decreed, that it be referred to a master to make partition of said Blackstone river, and establish gateways, gates, and apertures, in conformity to this decree, with full authority to make such admeasurements, and to try such experiments, by stopping the mills and works in said pleadings mentioned, or otherwise, as he may deem necessary, in order to make said partition and establish said gateways, gates, and apertures, and with full power and authority in in all other respects for carrying into effect this decree, and particularly with full powers to make such experiments as he may deem necessary to ascertain what effect, if any, upon the rights of the owners on the Smithfield side of the river, the use of a portion of the waters of said Blackstone river, on the Cumberland side thereof, at a place called Abbott's run, in the pleadings named, has upon the rights of the owner of the quarter part of said river on the Smithfield side of said river, owned by Henry Marchant, and that Samuel B. Cushing be appointed master for the purpose aforesaid.

It is further ordered, that all further questions, orders, and decrees in the premises, be reserved until the coming in of the master's report, particularly all questions between the said Oliver Chase, and the said Milton S Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale, to a certain part of the said Blackstone river, and the mode and place of using the same.

It is further ordered, that all questions of costs, particularly with regard to the said Milton S. Morse, Benjamin Fessenden, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., be especially reserved for the consideration of the court.

Circut court, June term, 4th day, 1845.

Entered as the decree of the court.

JOHN T. PITMAN, *Clerk.*

In pursuance to said decree, a commission issued to Samuel B. Cushing, in the words following:

RHODE ISLAND DISTRICT, *sc.*

The President of the United States of America, to Samuel B. Cushing, of Providence, in said district, esquire, greeting:

Know ye, that reposing confidence in your wisdom and fidelity, our circuit court, holden at Newport, within and for the Rhode Island district, have appointed, and by these presents do authorize and empower

you, as master, to make partition of the Blackstone river, establish gateways, &c., and to do and perform all such things as may be deemed necessary by you to carry into effect an interlocutory decree, entered of record in the cause in equity, wherein Oliver Chace is complainant, and Henry Marchant et als. are respondents, at the June term, 1845, thereof, as will more fully appear by a certified copy of said decree, under the seal of said court hereto annexed.

And before you proceed to act by authority of this commission and said decree, you are required to take an oath or affirmation, before some person duly authorized to administer the same, that you will faithfully and impartially discharge the duties of your said appointment.

And you are furthermore required, before you proceed to perform your duties as aforesaid, to give due notice to the said parties, or their attorneys, of the time and place of doing what may seem meet to you in the premises, that they may be present, if they see fit.

And when you shall have completed all that may be required of you in the premises, you are required to make your report of your doings in said premises, together with the commission, to our said court, under your hand and seal as soon as may be.

Witness the honorable Roger B. Taney, our chief justice, at Providence, this thirtieth day of June, A. D. 1845.

JOHN T. PITMAN, *Clerk.*

RHODE ISLAND DISTRICT, *sc.*

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, June 30, 1835.

Then personally appeared the said Samuel B. Cushing, and made oath that he would faithfully and impartially discharge the duties reposed in him under said commission, according to the best of his skill and understanding.

Before me, JOHN T. PITMAN, *Clerk.*

UNITED STATES CIRCUIT COURT,
June Term, A. D. 1845.

RHODE ISLAND DISTRICT, *sc.*

(In equity.)

This cause came on to be heard at the June term, A. D. 1845, of the court upon the bill and the answers of all the defendants except Elizabeth B. Kennedy, whose interest in the premises has expired since the filing of this bill; and counsel being heard thereon, it is ordered, adjudged, and decreed, by consent of parties, that partition be made of the waters of said Blackstone river, in the pleadings named, among the respective proprietors thereof in said bill mentioned, according to the proportion of said river which each proprietor owns, in conformity to the prayer of the complainants' said bill, and that apertures be established for all the privileges aforesaid in said bill mentioned, on

such a level, and of such a length, and be regulated in such a manner as to give to each proprietor of said river his proportion thereof, and no more, to wit:

To the said Oliver Chace one quarter part of said river, to be used on the Smithfield side of said river; and to the said Henry Marchant one quarter part of said river, also to be used on the Smithfield side of said river; and to the said Oliver Chace, Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale, the remaining half part of said river, to be used on the Cumberland side of said river, according to their respective rights and interests therein.

It is further ordered, adjudged, and decreed, that it be referred to a master to make partition of said Blackstone river, and establish gateways, gates, and apertures in conformity to this decree, with full authority to make such admeasurements, and to try such experiments, by stopping the mills and work in such pleadings mentioned, or otherwise, as he may deem necessary, in order to make said partition and establish said gateways, gates, and apertures, and with full power and authority in all other respects for carrying into effect this decree; and particularly with full powers to make such experiments as he may deem necessary to ascertain what effect, if any, upon the rights of the owners on the Smithfield side of the river, the use of a portion of the water of said Blackstone river, on the Cumberland side thereof, at a place called Abbott's run, in the pleadings named, has upon the rights of the owner of the quarter part of said river, on the Smithfield side of said river, owned by Henry Marchant; and that Samuel B. Cushing be appointed master for the purposes aforesaid.

It is further ordered that all further questions, orders, and decrees in the premises, be reserved until the coming in of the master's report, particularly all questions between the said Oliver Chace and the said Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale, to a certain part of the said Blackstone river, and the mode and place of using the same.

It is further ordered that all questions of costs, particularly with regard to the said Milton S. Morse, Benjamin Fessenden, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., be especially reserved for the consideration of the court.

Circuit court, June term, 4th day, 1845.

Entered as the decree of the court.

JOHN T. PITMAN, *Clerk.*

RHODE ISLAND DISTRICT, *sc.*

Clerk's office, circuit court, at Providence, June 30th, 1845.

I certify that the foregoing two pages contain a true copy of the decree in the case in equity, Oliver Chace vs. Henry Marchant et als., entered June term, A. D. 1845.

In testimony whereof I have hereunto set my hand and affixed the seal of said court on the day and year last above written.

[L. S.]

JOHN T. PITMAN, *Clerk.*

Under which, at the November term following, he made the following

Master's report:

To the honorable the circuit court of the United States, next to be holden at Providence, within and for the Rhode Island district—(In equity.)

I, Samuel B. Cushing, having been appointed by this honorable court, at the June term thereof, A. D. 1845, a master in chancery in the above entitled cause, to make partition of the waters of the Blackstone river, in the pleadings mentioned, among the several proprietors thereof, according to their respective rights, with full power and authority to try such experiments and make such admeasurements as may be necessary to carry into effect an interlocutory decree entered of record in said cause at the June term, A. D. 1845, respectfully report, that, in fulfilment of the duties required of me, I issued citations directed to the parties of record in said cause, or to their attorneys, to appear if they saw fit, at a time and place specified in said citations, to confer with me in relation to the best mode of carrying into effect the aforesaid decree; which citations with the acknowledgment of notice by the parties or their attorneys, are annexed to this report; and in the further prosecution of my duties, for the purpose of experiment, I have caused to be constructed in the trench leading to the mill belonging to the said Oliver Chace, and leading also to the mill belonging to the Abbott Run company, in the pleadings mentioned, apertures to discharge together one-half the water of said river, on the Cumberland side of said river; and in the trench leading to the mill owned by the said Henry Marchant, on the Smithfield side of said river, I have caused an aperture to be constructed to discharge one-quarter part of said river.

The said Oliver Chace owns the remaining one-quarter part of said river, in the use of which he is restricted by the decree aforesaid to the Smithfield side of said river. He has, however, no works in operation on the Smithfield side of the river, and has no occasion at the present time to use any portion of his water there, although he contemplates doing so at a future time, and is now making preparations for that purpose.

I have not therefore caused any aperture to be constructed for the said Oliver Chace on the Smithfield side of the river.

I would submit to the court that the said Oliver Chace desires the privilege of using the water which belongs to him in such proportions and at such places, on either side of the river, as may be most advantageous and convenient for him without infringing on the rights of other parties in this cause.

And I would further submit to the court that the apertures aforesaid have not as yet been fully tested, in order to ascertain whether their dimensions and levels are adapted to discharge the proportions of water which their respective proprietors are entitled to use; and, as further experiments will be necessary to determine the exact levels and dimen-

sions required for said apertures, the undersigned would respectfully request the court to grant further time for making such experiments, and to issue such further orders and decrees in the premises, as to your honors may seem meet and proper. All which is respectfully submitted.

SAMUEL B. CUSHING.

Providence, November 15th, 1845.

Which was duly accepted, as per the following decree, entered at the June term, 1846.

RHODE ISLAND DISTRICT, *sc.*

United States circuit court, June term, A. D. 1846.—In equity.

This cause came on to be heard at the June term, A. D. 1845, of this court, upon the master's report made to this court, and bearing date November fifteenth, A. D. 1845; and counsel being heard thereon, it is ordered, adjudged, and decreed, by consent of parties, that the said report do stand confirmed, and that it be referred back to the said Samuel B. Cushing, the master heretofore appointed in said cause, to make partition of the waters of said Blackstone river, in the pleadings mentioned, according to the interlocutory decree of this court, made at the June term, A. D. 1845.

It is further ordered, that all the powers and authority given to the said Samuel B. Cushing, master as aforesaid, by the interlocutory decree aforesaid, be continued to him.

It is further ordered, that all further questions, orders, and decrees, in the premises, be reserved until the coming in of the master's further report, particularly all questions between the said Oliver Chace and the said Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale, relative to a certain part of the said Blackstone river, and the mode and place of using the same.

And it is further ordered, that all questions of costs, particularly with regard to the said Milton S. Morse, Benjamin Fessenden, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., be especially reserved for the consideration of the court.

LEVI WOODBURY,
Associate justice of supreme court.

I neither oppose nor assent to this decree; the parties I represent being, in my view, merely nominal parties on the record.

SAMUEL AMES,
For Benj. Fessenden, Crawford Allen, Geo. C. Nightingale, and Sullivan Dorr, jr.

And at the November term, 1849, was read the following—Master's report:

To the honorable the circuit court of the United States, for the Rhode Island district, at the November term thereof, A. D. 1849, sitting in equity in the case.

OLIVER CHACE
vs.
HENRY MARCHANT et als.

The undersigned, Samuel B. Cushing, who was appointed by the honorable court, at the June term thereof, A. D. 1846, a master in chancery in the above entitled cause, to make partition of the waters of the Blackstone river, in the pleadings mentioned, according to an interlocutory decree of this court made at the June term thereof, A. D. 1846, respectfully reports:

That, having first been duly sworn to the faithful performance of the duties entrusted to him, and having notified the parties of the time and place when and where he would meet and consult them, as to the best mode of carrying into effect said decree, he accordingly met said parties, and, by consent of said parties, established apertures, to give to each proprietor of said river his proportion of the water, and no more, to wit, to the said Oliver Chace one quarter part of said river, to be used on the Smithfield side of said river; and to the said Henry Marchant one quarter part of said river, also to be used on the Smithfield side of said river; and to the said Oliver Chace, Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale, the remaining half part of said river, to be used on the Cumberland side of said river.

And the undersigned further reports, that, after said apertures were established, a written agreement was entered into between the said Oliver Chace, on the one part, and the said Henry Marchant, on the other part, wherein the said Oliver Chace leased to the said Henry Marchant, for a stipulated time, a portion of the water of said river owned by said Oliver Chace; and that under said lease, and by virtue of the same, the aperture established as aforesaid for the said Oliver Chace, on the Smithfield side of said river, was closed, and one of like dimensions was opened in the trench leading to the mills owned by said Henry Marchant, on the Smithfield side of said river; and that, in conformity with the provisions of said lease, or modifications thereof, verbally agreed to by said parties, the said Oliver Chace and the said Henry Marchant have used the water, and continue so to use it at the present time.

And the undersigned further reports, that he has made experiments, as required by the aforesaid interlocutory decree, "to ascertain what effect, if any, the use of a portion of the water of said Blackstone river, on the Cumberland side thereof, at a place called Abbott's run, in the pleadings named, has upon the rights of the owner of the one-quarter part of the said river owned by Henry Marchant.

The said Abbott's run is a small river, which enters the Blackstone river about a quarter of a mile below the mill-dam owned by said Oliver

Chace and said Henry Marchant, on said Blackstone river, called the Valley falls dam. Upon the said Abbott's run, and near the mouth of the same, a dam is erected for the use of the mill owned by said Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale; which said dam flows back the water of said Abbott's run, and forms a pond, called the Abbott's run pond. The said Abbott's run pond communicates with the said Valley falls pond by a trench, by which, whenever the water in said Abbott's run pond is at a lower level than the water in said Valley falls pond, a portion of the water of the Blackstone river can be made to flow from said Valley falls pond into said Abbott's run pond; and the aforesaid owners of the Abbott's run mill claim the right, by deed, to draw through said trench, from the said Valley falls pond into the said Abbott's run mill-pond, a sufficient quantity of water to operate, when used in conjunction with the water of the Abbott's run, cotton machinery equal to three thousand spindles.

The deed aforesaid, which conveys this right, was made by Crawford Allen at the time when said Allen was owner of the one-half part of the water of the Blackstone river, on the Cumberland side of said river, now owned by said Oliver Chace; and a copy of said deed is annexed to, and forms a part of, the answer of said Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale, to the complainant's bill in this cause. The water so drawn from the Blackstone river, by the said owners of the Abbott's run mill, passes through the aperture established as aforesaid on the Cumberland side of said river; for the one-half part of said river, owned by said Oliver Chace, Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale, and the use of a portion of said water at said Abbott's run mill, has no effect upon the rights of the owner of the one-quarter part of said river, on the Smithfield side of said river, owned by said Henry Marchant, provided said water is drawn through said aperture during the usual working hours only, or at such times only as the said Marchant is using his one-quarter part of said river, because no more water will pass through said aperture, at such times, than the said Oliver Chace, Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale, are entitled to use; but when water is drawn from said Valley falls pond into said Abbott's run pond, at other times than during the usual working hours, when no water is running over said Valley falls dam, the effect produced is injurious to the rights of the owner of the one-quarter part of said Blackstone river, on the Smithfield side of said river, owned by Henry Marchant, because a portion of the water of said Blackstone river, owned by said Marchant, is drawn from said Valley falls pond into said Abbott's run pond, and said Marchant is deprived of the use of the same.

In times of drought, when there is not a sufficient quantity of water furnished by the Abbott's run to operate the Abbott's run mill, the

owners of said mill cause a gateway to be opened in the trench aforesaid, communicating with said Valley falls pond, and when the water in said Abbott's run pond becomes reduced to a lower level than the water in said Valley falls pond, the water begins to flow through said trench into said Abbott's run pond; but when the water in the Valley falls pond is at a lower level than the water in the Abbott's run pond, the gateway aforesaid is closed, and no water is allowed to pass from said Abbott's run pond into said Valley falls pond.

In consequence of the trench aforesaid being of small capacity, and not having sufficient depth, the owners of the Abbott's run mill aforesaid are frequently unable to obtain through said trench, by drawing only during the usual working hours, a sufficient quantity of water from the Blackstone river to operate, when used in conjunction with the water of the Abbott's run, the amount of machinery they are entitled to have and use; and it has been, and now is, customary, with the owners of said Abbott's run mill, to draw the water through said trench, not only during usual working hours, but at any and all times, when the said Abbott's run pond is at a lower level than said Valley falls pond.

The undersigned would respectfully submit to the —— that the apertures established by him as aforesaid for the one quarter part of said river, owned by said Oliver Chace, on the Smithfield side of said river, and the aperture established as aforesaid for the one quarter part of said river, owned by said Henry Marchant, on the Smithfield side of said river, and the aperture established as aforesaid for the one half part of said river, on the Cumberland side of said river, owned by said Oliver Chace, Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale, have not been as yet sufficiently tested to determine whether said apertures are of the dimension and levels which would be best adapted to the advantageous use of the water power; and the parties interested are desirous of having further trial of them before a final decree is issued in this cause.

All which is respectfully submitted.

SAMUEL B. CUSHING.

PROVIDENCE, *November* 15, 1849.

And at the same term the respondents asked the master to be instructed as follows:

United States circuit court, November term, A. D. 1849.

In equity.

Upon the coming in of the report of the master in said cause, the said Henry Marchant asks that the said master be further instructed to make such experiments and observations as may be necessary to ascertain whether the said Abbott Run Company can draw water from the said Valley Falls pond, at other hours than the working hours, at low stages of the river, when the said Marchant is drawing his portion of

the water from said Valley Falls pond, without injury to the rights of the said Marchant; and to report to this court what mode, if any, can be devised by which said injury shall be prevented or compensated.

TILLINGHAST & BRADLEY, and
JOHN WHIPPLE,
Solicitors for Henry Marchant.

And upon the foregoing instruction, and upon hearing the same, the following decree was entered:

United States circuit court, November term, A. D. 1849.

RHODE ISLAND DISTRICT, *sct.*

In equity.

Upon motion of Henry Marchant, upon the coming in of the master's report in said cause at this term, for further instructions to said master, and upon argument of the same, it is further ordered by the court, that the said master make such experiments and observations as may be necessary to ascertain what modes, if any, can be devised by which the injury, if any, to the interests of said Marchant, by the present mode in which the said Abbott Run Company take and use the water from the Valley Falls pond, as stated in said master's report, may be either prevented or compensated.

November term, 13th day, 1850. Entered as the order of the court by order thereof.

JOHN T. PITMAN, *Clerk.*

And on the 9th day of October, A. D. 1849, was filed in the clerk's office, in accordance with the following assent of the respondents, viz:

RHODE ISLAND DISTRICT, *sct.*
Circuit court of the United States.

In equity.

The defendant does not object to the filing of the supplemental bill in said case, a copy of which has been furnished him by the plaintiff. By this assent, he does not waive the right to the usual term for answering the same after the return of the subpœna.

TILLINGHAST & BRADLEY,
Solicitors for H. Marchant.

The following supplemental bill, viz:

RHODE ISLAND DISTRICT, *sc.*

To the judges of the circuit court of the United States, for the district of Rhode Island, in equity.

The supplemental bill of complaint of Oliver Chase, of Fall River, in the county of Bristol, and commonwealth of Massachusetts, manu-

facturer, and a citizen of the State of Massachusetts, to the bill of complaint heretofore filed by him against Henry Marchant, of Smithfield, in the county of Providence, and State of Rhode Island, manufacturer, and a citizen of the State of Rhode Island, and Benjamin Fessenden, Milton S. Morse, both of Cumberland, in the county of Providence, and Crawford Allen, George C. Nightingale and Sullivan Dorr, jr., all of the city and county of Providence, partners in business under the name and style of the Abbott Run Manufacturing Company, and all citizens of the State of Rhode Island.

And thereupon the said Oliver Chace complains and says, that on the day of , A. D. 184 , he exhibited his original bill of complaint in this court against said Henry Marchant and others, setting forth therein that your orator was seized and possessed in fee simple of certain tracts or parcels of land situated at Valley Falls, in the towns of Cumberland and Smithfield, in the county of Providence and district of Rhode Island, together with a factory, picker house, dwelling-houses, and other improvements thereon, and the trenches and water-ways to the same, belonging to the same, and also of three-fourths of the water of the Blackstone river at that place.

And further setting forth that a trench, owned jointly by said Henry Marchant and your orator, leads from the pond formed by the dam on said estate to the mills of said Marchant, and the land owned by your orator on the Smithfield side of the river, and that there was no partition of said water-power at said Valley Falls, and that said Marchant refused to make partition although requested; and thereupon, your orator prayed that said water-power might be divided, and that apertures and gateways might be established for the said Marchant and your orator, in said trench, on said Smithfield side of the river, in such manner and of such size as to give said Marchant and your orator each one-quarter part of the water of said Blackstone river, and that your orator might be at liberty to remove his gateways whenever he might choose to use the water-power to which he was entitled on a different part of his estate, and also prayed the appointment of a master to carry into effect the decree of partition, and that said Marchant be enjoined from using more of said water than should be apportioned to him in said partition by said apertures and gateways.

And your orator would further state, that said Henry Marchant made answer to said bill, admitting the ownership of the water-power of said Blackstone river, at said Valley Falls, in the proportions therein stated, and joined in the prayer thereof to have said water-power divided and set off, three-quarters part to your orator and one-quarter part to said Marchant; and thereupon, at the June term of this court, 1845, a decree was passed by consent of parties, ordering that partition be made of said water of the Blackstone river, in conformity with the prayer of said bill, and that apertures be established and regulated in such manner as to give each proprietor of said river his proportion thereof, viz., to said Marchant one quarter part on the Smithfield side of said river, to your orator one-quarter part to be used on said Smithfield side, and to

your orator and others one-half part to be used on the Cumberland side, and appointing Samuel B. Cushing, master in chancery, for the purpose of making such partition, with full powers to make all necessary experiments for that purpose.

And further, that the said master, at the following term of the court in November, 1845, made report that he had established apertures as directed, so as to discharge one half part of the water of said river, on the Cumberland side, to the mills of your orator, and on the Smithfield side, one-quarter part of said river to the mills of said Marchant; but, as your orator was not at that time prepared to use the remaining quarter part of said river on the Smithfield side, he had constructed no aperture for the remaining quarter part; and further stating that the apertures had not been sufficiently tested, and requested further time to make experiments so as to determine the exact levels and dimensions required for such apertures.

And thereupon, at the June term, 1846, of this court, a further decree was passed, by consent of parties, referring back said cause to said master to make partition of the waters of said river according to the interlocutory decree first passed, and reserving all other questions until the coming in of said master's report.

And that said matter is now before said master, who has not yet completed the experiments necessary to determine the exact admeasurement of the proportions of said river belonging to said proprietors.

And your orator would further state, that he has leased to said Marchant so much of his water-power as will, in addition to his own quarter part of said river, properly operate the work of said Marchant, if the portion of your orator, after reserving a full supply for his mills, on the Cumberland side, is adequate thereto, and reserving the surplus, if there be any, after supplying the works of your orator in Cumberland, and the works of said Marchant, to be used by your orator on the Smithfield side, and that said lease expires on the 20th day of February, 1851; and that your orator has made extensive preparations and has expended large sums of money in constructing and completing trenches and water ways upon the Smithfield side of the river, as laid out and described on the plat of said estate referred to in said original bill, and for the purpose and with the intention of using his said water-power on said Smithfield side of the river, and intends to commence using the surplus water as aforesaid immediately, and the remaining quarter part of said river at the expiration of said lease.

And further, that in order to use said water-power he must construct his wheel so as to discharge the water therefrom into the raceway adjoining the mill lots belonging to your orator and said Marchant, and described in said original bill; which said raceway is owned by the said Marchant and your orator in the following proportions, viz., one-quarter part by said Marchant, and the remainder by your orator, and which is the only outlet for the water discharged from the wheels in said Marchant's mills, and from those which may be erected by your orator on said estate.

And further, that said raceway is of limited capacity, and not sufficiently large for the discharge of one half the water of said river; that at the time when the said Marchant purchased his portion of the said Valley Falls estate, there was one wheel in the factory purchased by him discharging into said raceway; that the volume of water discharged from said wheels was nearly, if not fully, equivalent to the reasonable and advantageous use of one quarter part of said raceway; that he has since erected two other mills, operated by five other wheels, which also discharge into the same raceway; that he thereby fills the said raceway to its entire capacity, so that if any more wheels were constructed by your orators upon said raceway they would be clogged and retarded by the excessive quantity of water thereby poured into said raceway, which would no longer be sufficient to free the wheels of water; that by said use of said raceway by said Marchant, your orator is prevented from constructing wheels upon said raceway, and is thereby deprived of all use and advantage from the water set off to him as aforesaid on said Smithfield side of the river; and the same, together with all the structures and improvements made by your orator on said Smithfield side will become unproductive and worthless, unless the rights of the respective parties to the use of said raceway are defined and set apart according to their respective ownerships of the same.

And your orator would further state, that he is the owner of a lot of land at the head of said raceway, conveyed by said Marchant to Crawford Allen, and by the assignees of said Crawford Allen to your orator, together with the right (also conveyed by said Marchant) of using on said lot the waters of the Blackstone river to which said Allen was, as your orator is entitled, from the old trench leading from the pond to said Marchant's mills; and that the only method of using said water upon said lot is by discharging the same into the raceway aforesaid, and thereby your orator is entitled to use the same to its fully capacity.

And your orator further states, that the use and enjoyments of said race-way in common with said Marchant is liable to difficulties and controversies, and is and will be attended with great inconvenience and loss to your orator; and your orator has therefore applied to the said Marchant to consent to a partition of the same by means of gates and apertures regulating the quantity of water to be discharged by each into the same according to their respective rights, to the full and reasonable and advantageous use of the same for both, and your orator had hoped that the said Marchant would have complied with so reasonable a request; but the said Marchant refuses the same, and will not consent thereto, unless compelled by a decree of this honorable court.

In consideration whereof, and inasmuch as your orator is remediless by the strict rules of the common law, and can have no adequate remedy or relief except in a court of equity, where matters of this and the like nature are properly cognizable and relievable:

To the end, therefore, that a decree may be passed by this honorable court, ordering and directing that apertures, gates, and gateways be established for the privileges aforesaid of the said Henry Marchant and

your orator in said raceway, so as to regulate the quantity of water to be discharged into the same by each, according to their respective ownership of the same, and so as not to exceed the reasonable and advantageous use of the same by both parties.

And that in establishing apertures, gateways, and gates, aforesaid, according to the several rights of the said parties in said raceway, there may be reserved the power and right of removing the same, or of altering them in case the interest of either of the said parties increases or diminishes by purchase, lease, sale, or otherwise, or in case either of said parties wishes to use the water to which he is entitled, and to discharge the same into said raceway, or another lot than that on which it is now used, or contemplated to be used, or in a different part of the same lot; and that in such case the apertures, gateways, and gates shall be so constructed and established at the places to which they may be removed, so as to give to each owner the same proportions of water to be discharged into said raceway, according to their respective titles to the same.

And that it be referred to a master to divide and apportion said raceway and the quantities of water which each party is entitled to discharge into the same, and to erect such apertures, gateways, and gates, in conformity with the decree of this court, as may be necessary to regulate the discharge of the water into said raceway in the proportions aforesaid.

And that the said Henry Marchant, his heirs, executors, administrators, and assigns, agents and servants, may be perpetually enjoined, all and each, from discharging more of the water of said river into said raceway than shall be allowed and apportioned to them, respectively, by the apertures, gateways, and gates, to be established as aforesaid, and for such other relief as to your honors shall seem meet.

May it please your honors to grant unto your orators the writ of subpœna, issuing out of and under the seal of this honorable court, and directed to the said Henry Marchant:

Commanding him to appear at the clerk's office of this court on the next rule day thereof, under a certain penalty therein named, then and there to answer the premises, and to stand to, abide, and perform such order and decree thereon as to your honors shall seem meet, and shall be agreeable to equity and good conscience.

OLIVER CHACE,
By HAZARD & JENCKES,
His Solicitors.

Upon which issued from said office, on the same day, a

Subpœna.

RHODE ISLAND DISTRICT, *sc.*

The President of the United States of America to Henry Marchant, of Smithfield, in the county of Providence, and State of Rhode Island, manufacturer, a citizen of the State of Rhode Island, greeting:

For certain causes offered to our circuit court for the first circuit,

within and for the Rhode Island district, in chancery, we hereby command and strictly enjoin you, and each of you, that, laying aside all other matters and things, and notwithstanding any other excuse, you and each of you personally appear at the clerk's office of said court, in Providence, on Monday, the fifth day of November next, being the rule day of said court, and then and there full, true, and perfect answer make, upon your several corporal oaths, to the bill of complaint of Oliver Chace, of Fall River, in the county of Bristol, and commonwealth of Massachusetts, and a citizen of the State of Massachusetts, now filed of record in the clerk's office of said court, and to do and receive whatever our said court shall order against you in the premises in this behalf. And hereof fail not, under the pains and penalties that may accrue in consequence of neglect thereof.

And the marshal of said Rhode Island district, or his deputy, is hereby commanded to make service of this writ by reading the same to the said Henry Marchant, or by leaving a true and attested copy hereof at their several last and usual places of abode twenty days before the rule day aforesaid.

Witness the honorable Roger B. Taney, our chief justice, at Providence, this ninth day of October, A. D. 1849.

JOHN T. PITMAN, *Clerk.*

Memorandum.—The appearance of the respondents in the suit is to be entered in the clerk's office on the return day of this writ, otherwise the bill may be taken pro confesso as against those not appearing.

UNITED STATES OF AMERICA,
Rhode Island district, sct.

October 10th, 1849.

Made service of the within subpœna by leaving a true and attested copy hereof at the last and usual place of abode of the within named Henry Marchant, as commanded.

GEORGE W. JACKSON,
United States Marshal.

Fees.

Service - - - - - - - - -	$2 00
Copy - - - - - - - - - -	50
Travel, 10 miles - - - - - - - - -	1 00
	$3 50

On the rule day in December, 1849, the following motion was entered in the order book:

RHODE ISLAND DISTRICT, *sct.*

Circuit court of the United States, in equity. At rule day, December 3, 1849.

The plaintiff in said cause moves that the supplemental bill, filed by him on the 9th day of October last, and upon which the subpœna was returned at the last rule day, be taken as confessed against the said Henry Marchant.

By his solicitors,

HAZARD & JENCKES.

And at the rule day in January following, it was ordered that said bill be taken pro confesso as prayed for by the complainant.

But afterwards, by consent of parties, on the 10th day of said January was filed in the clerk's office the following answer of Henry Marchant to the supplemental bill of complaint of Oliver Chace against him:

United States circuit court, Rhode Island district, November term, A. D. 1849.

Henry Marchant, saving and reserving to himself all benefit of exception to the manifest errors and insufficiencies in said bill of complaint contained, for answer thereunto, or unto such parts thereof as he is advised it is material to answer, answereth and saith: That true it is, as set forth in said bill, that a bill in equity for the partition of the water power of the Blackstone river, at said Valley Falls, in the towns of Cumberland and Smithfield, was brought by the said complainant against this respondent and others; and that, by consent of parties, a decree hath been rendered in said cause by this honorable court, by which decree one-half part of said water is to be used in each of said towns of Smithfield and Cumberland, the said towns being on opposite sides of said river.

And in further answer this respondent saith, that in and by the title deeds of this respondent, and of the complainant, to the water power and other estates at said Valley Falls, copies of which marked A and B are hereunto annexed, and this respondent prays that the same may be taken as part of this his answer; he submits that he is entitled to the free and unincumbered use of the raceways, and other waterways, for the passage of the quarter part of said river, in and by said deed marked **A**, conveyed to him. And he further submits that the rights of the complainant in said waterways on the Smithfield side of said Blackstone river are, by the express terms of said deed B to the complainants, subject to the prior grant to, and right of, this respondent in said water-ways. And that said complainant doth not own the three-quarter parts of the right to use said water-ways as claimed in his said bill; but on the contrary hath no grant of any interest in the same, unless as an appurtenance to this water power therein granted to him.

And this respondent further submits, that in and by the decree of this

honorable court, passed in said , it was provided that one-quarter part of the water power of said river belonging to said Marchant, and one-quarter part of the said river belonging to the complainant, and no more, should be used on the Smithfield side of said river; and that the water-ways on said Smithfield side are, in consequence thereof, as this respondent submits, to be used in equal proportions, and not one-quarter part by the complainant. And the master appointed to carry out said decree placed two apertures of equal dimensions and levels in the trench on said Smithfield side of the river, one for said respondent and one for said complainant, which apertures were used by said parties until the lease, in said bill mentioned, was executed. And in and by said lease it was provided by said parties that the expense of repairing and maintaining said trenches was to be paid equally by the respondent and complainant; there being, at the time, no expense or alteration of said raceway contemplated by the parties during the continuance of the lease.

And this respondent further submits that he hath, since the year 1831, claimed the right and enjoyed the free and unincumbered use of said raceway for the discharge of the quarter part of said river belonging to him, without interruption or complaint from said complainants or those from whom they claim; and during said period, both prior and subsequent to the filing of the original bill by said complainant against this respondent, this respondent hath erected two mills, and made large expenditures and improvements in said premises, for the use and employment of which the said use of said raceway is necessary.

And this respondent further answer answering saith, that the said raceway, at the time of the execution of the deeds aforesaid, was laid out according to the plat to which said deeds refer, to the width of thirty feet; that the side walls of the same, so far as then built, were at the distance of thirty feet from each other.

And that the archways of the Providence and Worcester railroad over said raceway, built under the direction of the said complainant as a contractor for said work, are thirty feet in span; and that the width of the same is of right throughout its whole course thirty feet, though in places partly filled in and made narrower by the washing in of earth; and your respondent further answering saith, that a portion of said raceway is upon land of this respondent, and a portion thereof upon land of the complainants; that this respondent hath, at his own expense, widened and deepened the said raceway on his own land, and this complainant hath forbidden this respondent to widen or deepen the raceway on the land of the complainant to the said width of thirty feet, though the land of said complainant is open, unimproved, and comparatively valueless.

And this respondent further answereth, that the said raceway, if dug out of the same depth as the said Blackstone river at the place where said raceway empties into said river, and of the width of thirty feet, would be sufficient to discharge one half of said river. And if, in

extraordinary stages of the river, or upon any increase in the capacity of the same, from reservoirs or other causes, the same should be found insufficient, the expenses of *of* enlarging the same, including the cost of the land taken for such purpose, would be trifling; and this respondent is at all times ready to contribute his portion of the same, and has already provided for the such increase on his own land, at his own expense, of which enlargement the complainant would have the full benefit, should he ever use the raceway as proposed in said bill.

And this respondent further saith, that the said raceway is not the only mode by which the water of the complainant on said Smithfield side of the river can be discharged, but on the contrary thereof, the said complainant hath opened, and at great expense nearly completed, a new trench on the Smithfield side of said river, leading by said raceway in such a direction, that the said trench could not be used in connexion with said raceway advantageously; that the location of said new trench, and of the land of the complainant, and the amount of head to be lost by the use of said raceway by said complainant, preclude the use of the same, as pretended in said bill. And all the expenditures of large sums of money hitherto made by the complainant, as stated in his said bill, for the use of his water power in said Smithfield have no reference to the use of said raceway, but point to another outlet below said raceway.

And this respondent further saith, that the complainant hath at no time been prevented or obstructed by the respondent in the use of said raceway; and that he hath not suffered any damage or injury in consequence of the use of the same by this respondent.

And this respondent further submits, that a division of the raceway, as prayed in said bill, is unknown in the practical use of such property; and that such division could not be made without serious injury to, and diminution of, the rights of this respondent therein and those of the complainant.

And the respondent further admits, that a deed was made by him to Crawford Allen, as set forth in said bill, of a small lot of land; and this respondent further saith, that said deed was made prior to the digging of the new trench, and to enable said Allen, and at his request, to use a small portion of said water power through the old raceway, and avoid the expense of building a new one; that the water used upon said lot may be delivered through the new trench instead of the old one, and that the use of the water power upon the premises conveyed in said deed, would deprive the owner thereof of about two or three feet of head in said fall, which he might have at the lower termination of said new trench; for which purpose this respondent submits that said trench, at an expense of many thousand dollars, was built by the complainant.

HENRY MARCHANT.

PROVIDENCE COUNTY, *sc.*

In Providence, this tenth day of January, A. D. 1850, then Henry Marchant personally appeared before me, and made oath, that he has read, and knows the contents of the preceding answer, and that the same is true of his own knowledge, except as to the matters which are therein stated to be of his information or belief, and as to those matters he believes them to be true.

HENRY MARTIN,
Public notary.

To which was made, at the rule day in March, 1850, the following

Replication.

Circuit court of the United States, in equity.

RHODE ISLAND DISTRICT, *sc.*

Supplemental bill.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith, that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in law to be answered unto by said defendant; and that the answer of said defendant is uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things their repliant is ready to aver, maintain, and prove as this hon. court shall direct, and prays as in and by his said bill he hath already prayed.

By his solicitors,

HAZARD & JENCKES.

Circuit court of the United States, in equity.

RHODE ISLAND DISTRICT, *sc:*

The said cause being at *at* issue, the complainant moves that a commissioner be appointed to take testimony in his behalf. Interrogatories waived.

By his solicitors.

HAZARD & JENCKES.

Assented to, provided commissioner take testimony for either party, and propose Joseph S. Pitman.

TILLINGHAST & BRADLEY,
And J. WHIPPLE,
For respondent.

March 4th, 1850. Let Joseph S. Pitman be appointed commissioner in the above cause.

JOHN PITMAN,
District Judge U. S., R. I. district.

March 15th, 1850.

Commission issued to J. S. Pitman.

JOHN T. PITMAN, *Clerk.*

UNITED STATES OF AMERICA.
Rhode Island district, sc.

The circuit court of the United States, within and for the Rhode Island district, to Joseph S. Pitman, esq., of Providence, in said district:

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you, to take the testimony of such persons as may be brought before you by either party to be used in a certain cause now pending in said court, wherein Oliver Chace, of Fall River, in the county of Bristol, and commonwealth of Massachusetts, is complainant; and Henry Marchant, of Smithfied, in the county of Providence, and State of Rhode Island, and citizen of the State of Rhode Island; and Benjamin Fessenden, Milton S. Morse, both of Cumberland, in the county of Providence, and Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., all of the city and county of Providence, partners in business under the name and style of the Abbott Run Manufacturing Company, and all citizens of the State of Rhode Island are defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, next to be holden at Newport on the fifteenth day of June next.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, our chief justice, at Providence, this thirteenth day of March, in the year of our Lord one thousand eight hundred and fifty.

JOHN T. PITMAN, *Clerk.*

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition , either himself, or by any attorney or agent, nor to communicate by interroga-

tories or suggestions with the deponent whilst giving deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross interogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

RHODE ISLAND DISTRICT, *sc.*

CLERK'S OFFICE CIRCUIT COURT,
At Providence, March 14th, 1850.

Then personally appeared the above named Joseph S. Pitman, and made oath that he would faithfully and impartially discharge the duty reposed in him by the foregoing commission, according to the best of his skill and understanding.

Before me, JOHN T. PITMAN, *Clerk.*

To the honorable circuit court of the United States, within and for the Rhode Island district.

Respectfully reports Joseph S. Pitman, the commissioner named in the within commission, that after having been duly sworn to the faithful and impartial discharge of his duties under the same, he met the parties on several days by them agreed upon, and took the depositions herewith returned of James F. Simmons, John Gardner, Daniel Hale, Lemuel H. Arnold, Samuel B. Cushing, Henry Jerauld, Hiram Wilmarth, George Smith, and Daniel C. Mowry, on behalf of the complainant; said deponents before giving their deposition were severally sworn or affirmed to testify the truth, the whole truth, and nothing but the truth, and said depositions were by me reduced to writing in the presence of the deponents, and by them subscribed in my presence. Both parties were present either in person or by attorney or agent, or when absent gave their assent in writing to the taking of any deposition, acknowledging sufficient notice of the time and place of taking the same, during the whole time of taking said depositions.

JOSEPH S. PITMAN,
Commissioner.

The plats, marked A, B, C, and D, returned with this commission, are annexed to and made part of the deposition of Samuel B. Cushing, *taking* as aforesaid.

RHODE ISLAND DISTRICT.

PROVIDENCE, R. I., *June* 3, 1850.

Fees $40.

JOSEPH S. PITMAN,
Commissioner.

1, James F. Simmons, of the town of Johnston, in the county of Providence, in the State of Rhode Island, &c., of lawful age, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, on oath depose and say:

1. Question by Thomas A. Jenkes, esq., for the complainant. Were you one of the commissioner[s] of the Farmers and Mechanic's bank appointed by the general assembly?

Answer. I was.

2. Question. In said capacity did you aid in laying out the Valley Falls estate on the Smithfield side of the river?

Answer. In said capacity I was advised with and consulted in relation to having said estate laid out and platted with a view to its sale.

3. Question. Did you execute the deed to Henry Marchant of a portion of this estate and water power, as one of said commissioners, and to Crawford Allen of the remaining part, as president of the Phœnix bank; and if so, how did this remaining part become the property of the Phœnix bank?

Answer. As one of the commissioners of the Farmers and Mechanics' bank, I executed one or more deeds, I think, to Henry Marchant of a portion of the estate, including water power, mills, and dwellings, and as president of the Phœnix bank I executed one or more deeds conveying the remainder of this estate to Crawford Allen, or to his assignees. I mean the estate on the Smithfield side of the river. This property became the property of the Phœnix bank, as the successors of the Farmers and Mechanics' bank, by virtue of the authority of the General Assembly changing the name and location of the bank.

Question. Are you a practical operator of water mills, and what length of experience have you had in their operation?

Answer. I am practically acquainted with the operation of water mills and have been engaged in business connected with their operation for more than thirty years.

Question. What effect is produced upon the operation of a water wheel by discharging a greater quantity of water into the raceway than can flow off freely, and is there a limit beyond which any additional discharge becomes disadvantageous?

Answer. The effect of discharging a greater quantity of water into the raceway of a water wheel, than will run off freely, is to create back water upon the wheel, and retard its motion and lessen its power, provided the wheel and raceway is so located or constructed originally as to use the water power to the best advantage. There is a limit beyond which any additional discharge becomes disadvantageous, which is indicated in the former part of the answer.

Question. Can this limit be determined practically in any raceway?

Answer. This could be determined in any raceway by a competent person who knew the nature of the stream where it was situated, but not by any rule applicable to all situations.

Question. How would you describe the limit at which a further discharge of water becomes disadvantageous?

Answer. Provided the apron and the wheel are both judiciously placed for using the water power on the stream, the limit is when a further discharge of water would increase the quantity of water on the apron.

Question. What effect is produced upon the head and fall by such increased discharge?

Answer. The effect is to destroy the water power by diminishing the effective head and fall. If the raceway was of a proper width, and the aprons and wheels so located as to use the water to the best advantage for power, and increase of water upon the aprons called back water would probably reduce the effective power, or what is equivalent, diminish the effective head to twice the extent of the back water, as it is my opinion it will take two feet of head to overcome one foot of back water, as mills and wheels are ordinarily constructed.

Question. What do you mean by a judicious location of the wheel and apron, and what description of wheel do you refer to when you speak of wheels of the usual construction?

Answer. As this question is propounded, it indicates that my answers to the former ones are either not understood, or are not sufficiently clear and explicit. The description of water wheels referred to by me as of the usual construction are bucket wheels, or wheels which are turned by the weight of water acting on their surface, technically termed overshot wheels, though not literally so, such as pitch back and breast wheels, that when running have their rims and buckets at the bottom moving in the direction of the stream or current in the raceway; under ordinary circumstances I should call a wheel and apron judiciously located when the apron of the wheel was placed at such a point above the ordinary surface of the water below at the point where the water used on a wheel is returned to the natural run, as that a raceway as wide as the length of the bucket of a wheel, with a rim not exceeding one foot in depth, would discharge the water from the wheel into the natural run without causing back or dead water on the apron; and a wheel judiciously placed when put just so high above an apron thus placed as to allow the water used on the wheel to escape from the bucket by the time it gets to the bottom of the wheel, so that no power may be lost in raising the water on the wheel after it passes the point at the bottom under its centre in order to empty the buckets.

JAMES F. SIMMONS.

Sworn to and subscribed before me June 1st, 1850.

JOSEPH S. PITMAN,
Commissioner.

Witness fees,

Two days attendance	$2 50
Five miles travel	50
	$3 00

I, John Gardiner, of North Providence, in the county of Providence,

in the State of Rhode Island, of lawful age, being first duly sworn according to law, on oath depose and say:

1st question. By Thomas A. Jenckes, esq., for the complainant. How long were you connected with the operation of the mills at Valley Falls?

Answer. About fifteen years.

Question 2d. What mills were in operation then on the Smithfield side in 1830, and what was the number of spindles?

Answer. There was one mill, the old stone mill, in operation on the Smithfield side, which contained about three thousand spindles; there was another stone building which was used formerly for a grist mill previous to that time, but it was used then for a machine shop, picking cotton and dressing yarn; this was in 1830.

Question 3d. What was the building used for which stood on the turnpike north of the stone mill; how was the water conducted to the wheel in said building, and how and where was it discharged, and when and how was that building destroyed?

Answer. That was the building which I have described in the latter part of my answer to question No. 2; the water was taken out of the trench which led to the large mill; the south end of the building stood very near the trench, and there was a short flume leading from the trench to it; the water was discharged into the raceway, as we called it; that was the upper end or head of the raceway; that building was burnt, I think, in January, 1832.

Question 4th. When was the lower or wooden mill built; what number of spindles was placed in this mill, and also in the stone mill, from time to time, down to 1839?

Answer. The lower, or wooden, mill, was built in the summer of 1831; there was very little alteration in the stone mill as to the number of spindles, because we took out old machinery and put in new, and did not vary the number of the spindles a great deal down to the [year] 1839; we started the machinery in the wooden mill in the spring of 1832, and we had about three thousand spindles. In the course of two or three years from that time, somewhere between 1832 and 1835, we put in about one thousand spindles more; and my impression is, that up to 1839, there were some further additions, but nothing very material, there might have been two or three frames added; I think that, in 1839, there would not be much variation from forty-five hundred spindles; there was a pair of mules containing about five hundred spindles put in about that time, I cannot say whether previous to or shortly after 1839.

Question 5th. How long was the machinery in the old mill and in the new wooden mill operated by one wheel in each?

Answer. There never has been but one wheel in the old mill, and there was only one wheel in the new wooden mill up to about 1841 or 1842, as near as I can recollect. I am pretty sure there was but one wheel in the wooden mill up to 1840.

Question 6th. When were additional wheels built, and where and how many additional spindles were then put into these mills?

Answer. There was one small wheel built, in a house which we used for picking cotton, in the summer of 1833. After that, somewhere between 1840 and 1845, there were two wheels built; one was built near the stone mill, and the other was built near the wooden mill, or, as it was then called, the new mill. There were no more wheels built as long as I remained at Valley Falls. There was nothing ever added of any consequence in the stone mill; the number of spindles there was never much beyond thirty-three or thirty-four hundred up to the time of my leaving, which was in 1846. Previous to about 1844 we made some further additions in the new mill, adding about fifteen hundred spindles. There was, I believe, a still further addition in 1845; we took out old mules and put in self-operating mules, in consequence of which the increase of spindles was something like five or six hundred. There were no further additions of consequence while I remained.

Question 7th. When was the new brick mill built, and how many additional wheels were then put in, and how many spindles are now operated in all these mills?

Answer. It was built, I think, in 1847. There were then two additional wheels put in. The little building used for picking cotton was moved off, the brick mill occupying its site and covering, also the wheels spoken of in my answer to question No. 6. I cannot exactly tell how many spindles are operated in all these mills; I think there are something near sixteen thousand.

Question 8th. Were any additional bulk-head gates put into the trench above the mills by said Marchant; and, if so, when and why, and how many, and were they put in previous to 1837?

Answer. There were two put in somewhere about 1840; they were put in because the old ones were not of sufficient size to keep the head up; I think they were not put in previous to 1837; they were put in September, 1839.

Cross examination.

Question by Charles S. Bradley, esq., for the respondents:

What is the present width and depth of the old raceway on the Smithfield side of the river, at Valley Falls, in the various portions thereof?

Answer. It is about thirty feet wide; it may fall short in some instances; I should think below the railroad it was a little less than that, but it makes no difference how wide it is above, if it is narrow below; it is between twelve to fourteen feet deep below the top of the dam.

Question 2d. Through whose land does the same pass?

Answer. It passes through both Marchant's and Chace's.

Question 3d. How wide and deep should the said raceway be to discharge one-half of the water of the Blackstone river freely?

Answer. It ought to be thirty feet wide, (full thirty feet,) and deep

enough to embrace all the fall; I mean to vent one-half of the river in the ordinary flow, not as we have it now, but as in June and July, and in the last of September and October. Those months are considered to be the ordinary flow of the river—more so than in any other months.

Question 4th. How wide and deep to discharge three-eighths of the water?

Answer. It ought to be as deep, but a little less in width would do; I should think probably three or four feet, but the depth ought not to be infringed upon.

Question 5th. How wide and deep to discharge three-quarters of the same?

Answer. I should think the trench ought to be widened out ten feet, and the depth should be kept up, not to be altered.

Question 6th. What is the value of the land requisite to enlarge the raceway sufficiently for the purposes mentioned in your last answers?

Answer. If it was mine I should be willing to take twenty-five dollars for it, and think myself pretty well used.

Question 7. How long has the said raceway been used by Mr. Marchant; has it been used during that time by any one else; what expenditures and improvements have been made by him which require the use of the same; when were they made?

Answer. Since September, 1830. It has not been used during that time, to my knowledge, by any one else. I should think Marchant had been to the expense of between two or three hundred thousand dollars on improvements which require the use of that raceway. In building two large mills, which have been nearly filled with machinery, a good many houses have been built, and one large weave shop. They were commenced in 1831; he then built what is called the lower mill, and it has been gradually progressing ever since.

Question 8th. Has any excavation been made, or trench built, either in part or wholly by the said Chace on said premises; if yea, where, when, what are the dimensions and location of the same?

Answer. A trench has been partly dug south of Marchant's mills by said Chace; within three years it was first commenced. It is about thirty feet wide where it is walled up, and where it is not walled I should think it was from forty to fifty feet wide; and Mr. Chace told me he should dig it ten feet deep below the top of the dam; that was previous to his commencing it. I should think it was dug down pretty near to that depth. As far as he has gone with it I should think it was six hundred feet long, probably more. Its location would not vary a great deal from what it is laid out on the plat, the original Valley Falls plat, which was platted by the Farmers' and Mechanics' Bank then, the Phenix Bank now.

Question 9th. What is the purpose and expense of the same? State as nearly as you can.

Answer. I could not tell about the expense. It was dug for the purpose of conveying his proportion of the water down to mills which he

contemplated building. I should think it cost two thousand dollars or more; I should rather be inclined to think more. It probably cost from two to four thousand dollars.

Question 10th. Would the water, drawn through the trench last mentioned, be discharged most advantageously through said old raceway, or by some other outlet into the river? State fully the reasons for your opinion.

Answer. By some other outlet into the river If the water was discharged into the old raceway it would have the tendency to fill up and thereby diminish the fall, that is, I mean to say as the old raceway is now *by* filling the raceway up, I mean to create back water. It would be better to deliver that water below the old raceway, and thereby get all the fall.

Question 11th. Have you heard any statements from said Chace, or any agent of his, respecting the use and purposes of said trench or said raceway; if yea, from whom, when, and what were they?

Answer. Mr. Chace told me himself he wanted to use his water down below, so as to deliver his water direct into the river, and not to use the old raceway at all. I am strengthened in my belief of that because he talked of building the mills, and I talked of hiring them. The raceway I considered under that arrangement as being abandoned by him; this conversation was between four and five years ago, before the trench was begun.

Question 12th. Have you heard any statements from said Chace, or any agent of his, respecting the use of the Allen lot, so called; if yea, state when and from whom, and what they were, and where said lot is located.

Answer. Mr. Chace called on me some considerable time ago; I can't recollect exactly when, and made some inquiry respecting the Valley Falls turnpike, (I am their treasurer,) and said he expected to make an arrangement with Mr. Marchant to purchase a part of that turnpike, I think I understood him to say about one-half, and then he said he and Marchant expected to build a new dam below the bridge, (I told him in that case there ought to be some very strong stone abutments or piers built to support the bridge, that being above the dam,) and then carry the water in a trench below the turnpike to the old trench; there was nothing said about the Allen lot at that time, but this trench would go through it; that lot is located at the head of the old raceway, east of the turnpike.

Question 13th. Has said Marchant a steam engine in connexion with his works; if yea, of what power?

Answer. He has one; it is said to be rated at one hundred and eighty horse power.

Question 14th. How much water dose the gauge allow him to draw through said raceway?

Answer. One quarter of [the] river I believe has been set off.

Question 15th. Is it practicable to divide the water in a raceway after it has left the wheel?

Answer. No, sir, I never heard of such a thing; I should think it would not.

JOHN GARDINER.

May 11th.

The counsel for the plaintiffs objected before the cross examination of the before named witness to the questions relating to any declaration made by the plaintiff, or by his agent.

Question 16th. Does not the number of spindles which can be operated at a given place materially depend upon the manner of using the water, the construction of the wheel or wheels, and the kind of machinery operated?

Answer. Yes, a great deal on that.

Question 17th. Do you know that during the last summer Marchant was restricted to the use of one-fourth of the river; what proportion of the season was he so restricted, and how much machinery he operated at that time with this proportion of the water?

Answer. I know he was restricted during last summer in the low stage of water, that he was put upon his rights. He hired water of Chace, and that was the agreement, as I understood it, that if Chase wanted the water Marchant was to be put upon his rights, and restricted to one-quarter part of the river. I could not tell what proportion of the season he was so restricted; it was along in August and the fore-part of September I should think. I do not know how much machinery he operated at the time with his proportion of the water.

Question 18th. Did not Chace at that time use the remaining three-fourths of the river on the Cumberland side, and did it not require all and even more than the three-fourths of the river to run all his machinery with ordinary speed?

Answer. I understand that he did use the remaining three-quarters when Marchant was restricted. I understood that Chace did not get speed under those circumstances for their machinery; Samuel Chace told me so.

Question 19th. Will it or not require the use of one-half or more [of] the water power of the river in the summer season on the Cumberland side to supply the Abbott Run mills with their proportion, and run the machinery now in operation belonging to said Chace with ordinary speed?

Answer. Of the ordinary flow of the river, I should not think it would take one-half; the ordinary flow of the river, I consider to be at this season, in the months of May and June, and in the months of October and November, the intervening time, that in July and August, is considered to be a dry season; the balance of the summer season when there is not the ordinary flow, I should think it would take more than one half; I am speaking of the seasons as they have been for the last four or five years.

Question 20th. Who was the contractor for building the railroad arch over the old raceway?

Answer. I do not know.

Question 21st. Is there any greater difficulty in providing sites for the increase of the machinery by the complainant on the Cumberland side of the river, than there is for providing for the same upon the land of Chace, on the Smithfield side, if the new mills on the Smithfield side should be so built as to discharge the water into the old raceway?

Answer. There are great deal better sites on the Smithfield side, but if the new mills were to be built on the land of Chace, so as discharge their water into the old raceway, as it now is, it would be equally difficult to so provide sites, and for the complainant to provide sites on the Cumberland side of the river, taking into account the flow of the water into the raceways on both sides as they now are.

Question 22d. Do not the complainant and his son and agent own sufficient land on the Smithfield side of said river upon which to carry on the business incident to running fifty-four thousand spindles, provided they used the new trench built by them, and did not use the old raceway?

(Objected to by counsel for the complainant as irrelevant.)

Answer. Oh, certainly; yes.

Question 23d. How many spindles could be operated upon the Allen lot, according to estimates heretofore made by you, if any such estimates have been made? If not, state according to the best of your judgment.

Answer. I suppose a building might be put up there which would hold from three to four thousand spindles.

Direct examination resumed.

Question 9th. Does not the raceway upon the Cumberland side empty into the river above that upon the Smithfield side, and is there not fall in the river between the two places?

Answer. Yes.

Question 10th. Is there or not less available head and fall on the Cumberland side, as the mill is located, and the water power used upon the Smithfield side through the old raceway.

Answer. Yes; and I don't know how it can be altered.

Question 11th. Was not the last season one of unusual and long continued drought?

Answer. Yes, it was.

Question 15th. Have you at any time applied to Samuel B. Chace to hire the Allen lot and water power therewith, for mill purposes?

Answer. Yes; I have. JOHN GARDNER.

Sworn to and subscribed before me, June 3d, 1850.

JOSEPH S. PITMAN,
Commissioner.

Witness' fees.

3 days attendance - - -	$3 75
5 miles travel - - -	50
	$4 25

I, Daniel Hall, of the town of Smithfield, in the county of Providence, in the State of Rhode Island, of lawful age, being first duly engaged, according to law, to testify the truth, the whole truth, and nothing but the truth, affirm and say:

1st. Question by Thomas A. Jenckes, esq., for the complainant.

Are you a practical operator of water mills, and how long have you been acquainted with the operation of water wheels, and what opportunities have you had for making observations upon such operations?

Answer. I consider myself a practical operator of water wheels; I am a millwright by profession, and commenced in that business in 1817, at the age of twenty-three, and my experience in the business has been confined to the Blackstone river; for the last seven years I have been a practical operator of machinery, superintending the Manville mills.

Question 2d. What effect upon the operation of the wheels is caused by the discharge of water into a raceway beyond the quantity which can run off freely in such race; and is there a limit to the quantity which can be discharged into any race to advantage?

Answer. The effect, one effect is to lessen the power, and another effect is to injure the wheels; I should say there is a limit to the quantity of water which can be discharged into a raceway to advantage.

Question 3d. Can this limit be ascertained practically in every raceway?

Answer. I think it can be better by practice than by theory.

Question 4th. What, in your opinion, is the limit beyond which an increased discharge of water would become a disadvantage to the operation of the wheels?

Answer. Such a discharge of water as would cause the water to come within the soleing of the wheel so that the water is moving within the wheel and acting back against the arms of the wheel.

Question 5th. Have you examined the raceway below Marchant's mills, at Valley Falls; and if so, will you state whether, in your opinion, any greater quantity of water than that now discharged from Marchant's mills could be discharged into the same advantageously; and if any more, from how many additional wheels of the length of those in Marchant's mills?

Answer. I was at these mills last Wednesday, while the mills were in operation; I saw the four wheels that are under the brick mill, which is termed the east wheel in Mr. Cushing's deposition; the water was on the inside the soleing of the wheel, I judged something like six inches in depth. The next wheel, there was no water on the inside of it; and the third one there was no water on the inside, and the fourth one, there was a very little, perhaps an inch or two; two inches, perhaps. The other two wheels discharging into the race I did not see. It is my opinion that this race could not be occupied for the discharge of water for mill purposes by the owner of the privilege, for the operation of spindles of the same grade that are there, requiring the same

power for a greater number than twenty-four thousand, advantageously, in the present condition of the race; I am informed that the number of spindles now operated by those wheels is 15,780.

Question 6th. What effect upon the head and fall is produced by an increased discharge of water beyond the limit named in your answer to the fourth interrogatory?

Answer. The more water drawn from the canal, or trench, reduces the head, and if the water in the race is up to the bottom of the wheel, and there is such a quantity drawn in after that as to cause it to come up on to the wheel, there is a reduction of the head and fall, or whatever it is termed.

Cross examination.

Question by Charles S. Bradley, esq., for the defendants.

At the time of your examination of the amount of water in the raceway at Marchant's mills, on the day referred to in this deposition, what was the state of the water in the river, higher or lower than the ordinary flow, and how much did it differ?

Answer. The water then was above the average flow of the river. I examined the race before the rain, of Wednesday night; the rise of the water on our dam since that last rain was three inches and a half, the dam being 266 feet long, seven miles above the dam at Valley Falls. At the request of Mr. Marchant, I state, I don't know what was the height of water on the Central Falls dam on the day referred to.

DANIEL HALE.

Subscribed and affirmed to before me, this fifteenth day of March, A. D. 1850.

JOSEPH S. PITMAN, *Commissioner.*

Witnesse's fees.

Travel 12 miles, - - - - - -	$1 20
Attendance 1 day, - - - - - -	1 25
	$2 45

I, Lemuel H. Arnold, of the town of South Kingstown, in the county of Washington, in the State of Rhode Island, of lawful age, being duly engaged according to law, on affirmation depose and say:

Questions by T. A. Jenckes, for the complainant.

Question 1st. Were you one of the commissioners of the Farmers' and Mechanics' Bank?

Answer. I was. I was the acting commissioner; I transacted nearly all the business, with the advice and approbation of the other commissioners.

Question 2d. Did you, as one of said commissioners, cause the estate

conveyed to the bank by Abraham and Isaac Wilkinson, at Valley Falls, to be laid out and platted for the purpose of sale?

Answer. I did.

Question 3d. What portion of the water power at that place was owned by the bank, and how and where was it then used?

Answer. All the water power at that place was conveyed by Abraham and Isaac Wilkinson to the bank, except one-twelfth, which was owned and improved by William Harris, on the Cumberland side of the river. A portion of the residue of the water was improved in the stone mill which A. and J. Wilkinson conveyed to the bank, and in a small building near the mill. The residue of the water was unimproved at the time of the conveyance to the bank.

Question 4th. What mills were then standing upon the land belonging to the bank; where were they situated, and with how many wheels and spindles?

Answer. The stone mill and small building, as above, were all the mills then on the land conveyed to the bank. The stone mill was and is situated, as well as the small building, on mill lot No. 1, as given on the plat. I don't know whether there were one or two wheels in the stone mill; there was one, at least, and one wheel in the small building; I cannot state precisely the number of spindles, but I think something like three thousand, with the preparations and looms, in the two buildings above referred to. My impression is, there were a little over three thousand spindles.

Question 5th. How was the water conducted to, and how discharged from, those wheels?

Answer. The water was taken from the old trench and conducted directly to the stone mill under the turnpike, and was taken from the small canal into the small building mentioned, and was discharged from the wheels, and run into the river; but I cannot state the precise point where it run into the river, or the course of the channel which led to it.

Question 6th. How many mill lots were laid out adjoining this raceway?

Answer. On the projected trench and raceway, we laid out six mill lots.

(The respondents, by their counsel, objected to all the foregoing questions before they were put, as being irrelevant.)

Question 7th. What number of wheels of the size of that in the stone mill, would be adequate to the capacity of said raceway; or if you prefer, state it in another manner; what number of spindles could be operated by the water that could be freely and advantageously discharged through said raceway?

Answer. I cannot tell what number of wheels of that size would be adequate to the capacity of said raceway, but, in laying out the mill lots for the use of the water we appropriated one-quarter of the river to the Cumberland side, and three-quarters to the Smithfield side; the three-quarters to be used on the six mill lots aforesaid, and we supposed

that the trench and the raceway, as laid out upon the plat, would be adequate to the improvement and discharge of the three-quarters of the river in its ordinary height. Whether it be adequate or not, it was our intention to make it so when we projected it. We suppose that the water used on mill lot No. 6, on the plat, would be discharged directly into the river; and, therefore, that portion of the water would cause no obstruction in the raceway. I feel incompetent to state what number of spindles could be operated by the water that could be freely and advantageously discharged through said raceway; we did not go into an accurate estimate of the number of spindles the water would operate, but in laying off, dividing, platting, and selling the mill lots, we meant to sell a precise portion of the river, leaving the purchasers and those who should subsequently occupy it, to define and graduate the use of the same according to the proportion each one owned in the river; my own estimate of the power of the river, according to my best recollection, was thirty-two thousand spindles, eight thousand to be operated on the Cumberland side of the river, and twenty-four thousand on the Smithfield side of the river.

Question 8th. How long have you been practically acquainted with the operation of water mills and the use of water power?

Answer. About twenty-five years.

Question 9th. From your experience in operating mills and your knowledge of the trench and raceway at Valley Falls, is it your opinion that a larger quantity of water than that required for the operation of the number of spindles above named could be used and discharged through said raceway advantageously and without impeding the speed of the wheels?

Answer. It was my judgment that five-eighths of the power of said river could be used on the five mill lots, as laid on the plat, and that the raceway would discharge the water therefrom without materially impeding the speed of the wheels. This is calculating the water of the river as it then was, and at the ordinary stage of the water in the river; I refer to the first five mill lots, leaving No. 6, or one-eighth of the water, to be discharged directly into the river.

LEMUEL H. ARNOLD.

Subscribed and affirmed on the twenty-ninth day of March, 1850, before me,

JOSEPH S. PITMAN,
Commissioner.

Witness's fees.

1 day's attendance - - - -	1 25
30 miles' travel - - - - -	3 00
	$4 25

I, Samuel B. Cushing, of the city and county of Providence, in the State of Rhode Island, of lawful age, being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, on oath depose and say:

Question 1st, by Thomas A. Jenckes, esq., for the complainant. In your opinion as a practical engineer, is it practicable to regulate the discharge of water into a raceway, between two parties, so that one party may discharge three times the quantity of the other?

Answer. I should think it was.

Question 2d. Have you surveyed the property at Valley Falls upon the Smithfield side, owned by the complainant and by the defendant, and have you measured the raceway and taken the level of the bottom of the race and of the river opposite, and if so, will you state:

1st. What is the average width of the race, and what is its length?

Answer. The average width of the race on the bottom is (27¾) twenty-seven and three-quarter feet, of that part which lies east of the railway; the part which lies west of the railway is from thirty-two to thirty-five feet wide as far as the west end of the brick mill. The width of the raceway east of the railroad was measured in August last. The length of the race from Marchant's old mill to the mouth is about eleven hundred feet.

2. What is the fall in the race from Marchant's lower mill to its mouth?

Answer. The fall on the bottom of the race is two feet and ten inches.

3d. What is the difference in level between the bottom of the race opposite Marchant's lower mill and the bottom of the river at the railroad bridge, which is the lowest, and how much?

Answer. The bed of the race is one foot and twenty-one hundredths lower than the bed of the river.

4th. How much is the wheel in Marchant's lower mill above the bottom of the race opposite, and how are the other wheels situated, above or below the bottom of the race opposite? Give the elevation or depression of each.

Answer. The bottom of the race opposite Marchant's lower mill is seventy-nine hundredths of a foot lower than the bottom of the wheel, that is, the rim of the wheel. The bottom of the east wheel in the brick mill is seventy-two hundredths of a foot higher than the bottom of the race. The bottom of the second wheel from the east end of the brick mill is one foot fifty-one hundredths higher than the bottom of the race. The bottom of the third wheel from the east end of the brick mill is one foot fifty-five one-hundredths higher than the bottom of the race. The bottom of the fourth wheel from the east end of the brick mill, I mean the fourth main wheel, is ninety-six one-hundredths of a foot higher than the bottom of the race. The bottom of the wheel in the old mill is one foot sixty-six one-hundredths higher than the bottom of the race. The bottom of the race I have mentioned is the bottom of the race opposite the wooden mill near the railroad. The bot-

tom of the race opposite the upper end of the brick mill is about six inches higher than the bottom of the race opposite the wooden mill, or lower mill.

5th. How much is the bottom of each wheel below the cap log of the dam?

Answer. The bottom of the wheel of the lower mill is thirteen feet and fifty-five one-hundredths lower than the cap log of the dam. The bottom of the east wheel in the brick mill is thirteen feet sixty-two one-hundredths lower than the cap log of the dam. The bottom of the second wheel from the east end is twelve feet eighty-three hundredths lower than the cap log. The bottom of the third wheel is twelve feet eighty-five hundredths lower than the cap log. The bottom of the fourth wheel is thirteen feet thirty-eight hundredths lower than the cap log of the dam. The bottom of the old mill wheel is twelve feet sixty-eight hundredths lower than the cap log of the dam.

6th. What is the length of bucket of each wheel?

Answer. I am not able to answer; I have never measured them. Since giving the foregoing answer I have measured them. The length of bucket of each wheel is fifteen feet and three inches in the clear.

7th. How far above the mouth of the raceway does the line of Oliver Chace's land meet it?

Ans. When the river is very low the mouth of the raceway would be about seventy feet below the line; in higher stages of the water it would be from thirty to forty feet.

Question 3d. How much of the original Valley Falls mill estate in Smithfield is owned by said Marchant, and how much by said Chace? Give the area of each exclusive of the land taken by the railroad and the trenches, streets, and water-ways, owned in common as indicated on the plat made by you.

Ans. The quantity of land owned by said Chace is about six acres and forty-nine hundredths, and the quantity owned by said Marchant is about four acres and sixty hundredths.

Question 4th. Do you remember the mill that once stood on the Allen lot, so called, and when was it destroyed?

Ans. About the year 1833 or 1834 I levelled to the apron of that mill after the mill was burned down; how long it had been destroyed I don't know.

Question 5th. What is the area of the lot of land belonging to the plaintiff upon which the dam abuts, and upon which the bulk head gates are situated, and is the arear of this lot included in the foregoing measurement?

Ans. The area is about seven-tenths of an acre, and it is included in the foregoing measurement.

Question 6th. Can the plaintiff apply said lot to other uses than those to which it is now appropriated with advantage to himself and without interfering with the common uses to which it is subject, for access to said dam and gates, and for other purposes connected with their uses and repairs?

Ans. I think not.

Cross examination.

1st. Question by Charles S. Bradley, esq., for the respondent.

What is the present width and depth of the old raceway on the Smithfield side of the river at Valley Falls in the various portions thereof?

Answer. I have given the width as measured in August last in my direct examination; it has been widened some since that time in some portions of it; I cannot say how much, I have not measured it; the part east of the railroad has been widened and deepened; the depth of water varies with the state of the river from two to four or more feet, sometimes it may be six feet at the mouth; the excavated depth below the surface of the ground is from ten to eighteen feet; the bottom of the race at the mouth is two feet and seven inches below the top of the Central Falls dam; it rises gradually to opposite Marchant's lower mill, where it is about three inches above the top of the Central Falls dam; then it rises six inches more to a point opposite the west end of the brick mill; that was the depth in August when I measured it; I cannot say that it is so now.

Question 2d. Through whose land does the same pass?

Answer. It passes partly through land of Oliver Chace and partly through land of Henry Marchant, and through land occupied or owned by Prov. and Worcester Railroad company.

Question 3d. How wide and deep should said raceway be to discharge one-half of the Blackstone river freely?

Answer. I should think a raceway thirty feet wide and three feet deep below the top of the Central Falls dam would do so in ordinary stages of the river.

Question 4th. How wide and deep to discharge three-eighths of the water?

Answer. About twenty-five feet wide and three feet deep as above.

Question 5th. How wide and deep to discharge three-quarters of the same?

Answer. About forty-three feet wide and three feet deep as above.

Question 6th. What is the value of the land required to enlarge the raceway sufficiently for the purposes mentioned in your last answers?

Answer. I am not able to state what the value of that land is.

Question 7th. How long has the said raceway been used by Mr. Marchant; has it been used during that time by any one else; what expenditure and improvements have been made by him which require the use of the same; when were they made?

Answer. I am unable to reply to either of these questions.

Question 8th. Has any excavation been made or trench built either in part or wholly by the said Chace on said premises; if yea, where, when, what are the dimensions and location of the same?

Answer. Yes, from the southwest corner of Marchant's upper mill, extending easterly under the railroad, passing about twenty feet southerly of Marchant's lower mill; they were at work upon it during the

years 1847 –'8 and –'9; it is about thirty feet wide and eight feet deep below the top of the Valley Falls dam; it is about seven hundred feet long.

Question 9th. What is the purpose and expense of the same? State as nearly as you can.

Answer. The purpose I suppose to be to operate a mill or mills. The expense of the part now done I should think would be about seven thousand dollars.

Question 10th. Would the water drawn through the trench last mentioned be discharged most advantageously through said old raceway or by some other outlet into the river? State fully the reasons for your opinion.

Answer. By some other outlet; because an outlet into the river, below the mouth of the present old raceway, would enable the mill to use more fall.

Question 11th. Have you heard any statement from said Chace, or any agent of his, respecting the use and purposes of said trench or said raceway; if yea, from whom, when, and what were they?

Answer. I have not.

Question 12th. Have you heard any statements from said Chace, or any agent of his, respecting the use of the Allen lot, so called? If yea, state when, from whom, and what they were, and where said lot is located.

Answer. I have heard none. Said lot is located northwesterly of Marchant's upper mill; joins partly on the trench leading to said mill, partly on the old raceway, and joins, westerly, on the Valley Falls turnpike.

Question 13th. Has said Marchant a steam engine in connexion with his works; if yea, of what power?

Answer. He has; I am not able to state the power of it.

Question 14th. How much water does the gauge allow him to draw into said causeway?

Answer. When the gauge is in, it allows him to draw one-quarter of the river.

Question 15th. Is it practicable to divide the water in a raceway after it has left the wheel?

Answer. I suppose, strictly speaking, it is practicable to divide it by means of a bulk-head or partition running the whole length of the raceway, but this mode would be very expensive, and not an advantageous way to divide it.

Question 16th. Did you ever know a raceway divided in the manner you state, or in any other manner?

Answer. I never have.

Direct examination resumed.

Question 7th. Do you know of any other raceway on the Blackstone river which is owned and used in common; if so, where, and what is

the width and length, and how many spindles, and what other machinery are operated by the water discharged into it?

Answer. I know of none.

Question 8th. Is it any more difficnlt, in your opinion, to regulate the discharge of water into a raceway to a given limit, so as to effect a partition in the use of it between two parties in any given proportion, than to make any other partition of water power?

Answer. It is not.

Question 9th. Do you know of any water privileges, the owners of which are entitled to draw a given number of cubic feet of water, or a quantity adequate to the operation of a given number of spindles, or other amount of machinery, and has any practical difficulty been found, to your knowledge, in setting off and assigning to such owners their proper quantity of water?

Answer. The owners of the water power at Greenville, Connecticut, are entitled to a sufficient quantity of water to run a certain number of spindles; there is no practical difficulty in setting off to each his proper portion of the water.

Question 10th. What do you understand by the ordinary flow of the Blackstone river?

Answer. By the ordinary flow of the Blackstone river, I understand the usual flow during the summer months, not the very lowest stages, but the common run of the river during the summer.

Question 11th. When was the first partition of water power made on the Blackstone river, to your knowledge, and at what place?

Answer. The first partition of water power commenced about the year 1826, at Pawtucket, according to the best of my recollection.

Question 12th. What is the quantity of fall in each privilege at Woonsocket, and what number of spindles, and other machinery reduced to spindles, is operated on each?

Answer. The average fall at the upper privilege in Woonsocket is about sixteen feet, the quantity of machinery operated by it is equal to about 32,000 spindles; as to the lower privilege I am not able to state the particulars.

Question 13th. Are said privileges used to their full capacity, or near it, in low or ordinary stages of the river?

Answer. I consider the upper privilege to be occupied very near to its full capacity. They are adding some machinery to the lower privilege this season. When that is added I should think it would be occupied fully.

Question 14th. What is the amount of fall at Central falls, and what number of spindles, or other machinery reduced to spindles, is there operated?

Answer. I cannot state the amount of machinery at Central falls, but that privilege in my opinion is occupied to its full extent, for they are often short of water in the summer season.

Question 15th. Is that privilege used to its full capacity, or near it, in low or ordinary stages of the river?

Answer. In my opinion that privilege is occupied to its full extent, or nearly so.

Question 16th. What is the quantity of fall in each privilege at Pawtucket, and what number of spindles, or other machinery reduced to spindles, is operated on each?

Answer. I am not able to state.

Question 17th. Are those privileges used to their full capacity, or near it, in low or ordinary stages of the river?

Answer. They are nearly occupied to their full capacity in low stages of the river.

Question 18th. What number of spindles are used on each privilege to a foot of fall, and is such use found to be near or quite the full capacity of the river at low or ordinary stages?

Answer. About two thousand spindles to a foot of fall will occupy the Blackstone river to its full capacity, in ordinary stages.

Question 19th. What is the width of the raceway at Valley falls in the arch of the railroad bridge, and how much above the bottom of the race is the present railroad track. How is this bridge constructed, and what was its cost, and how do you know the amount?

Answer. The width of the raceway is thirty feet between the abutments. The track of the railroad is about thirty-seven feet above the bottom of the race. The bridge is constructed of stone abutments and wings, with a brick arch, and the gravel is filled in upon the top of the arch. The cost of the masonry was about six thousand dollars; I know this, by having had charge of the construction of the bridge when built by the Providence and Worcester Railroad Company.

Question 20th. What, in your opinion, was the cost of constructing the present raceway?

Answer. I should think it cost not far from four thousand dollars. This opinion is not founded upon calculation, but is a mere guess.

Question 21st. How wide and deep should a raceway be constructed at Valley Falls to discharge the water required to operate 36,000 spindles?

Answer. The raceway should be about eighty-six feet wide and three feet deep, that is, to allow three feet depth of water in it.

Question 22d. How wide and how deep to discharge the water from 54,000 spindles, also from 72,000?

Answer. It should be about one hundred and twenty-nine feet wide and the same depth of three feet as before, for 54,000 spindles, and for 72,000 spindles about one hundred and seventy-two feet wide, and the same depth of three feet, as before.

Question 23d. What portion of the bottom of the race above the railroad is rock, and of what kind of earth is the remainder of the bottom composed, and what obstructions exist to the widening of the raceway above and at the railroad?

Answer. Some portion of the bottom of the race above the railroad is rock, what proportion I am unable to state. The remainder is composed, I should judge, of gravel and pebbles. The abutments of the

railroad arch would interfere with widening the race at the railroad, above the railroad. Marchant's mill, would prevent its being widened on the south side, and the engine house would interfere with the widening it on some portion of the north side.

Question 24th. Is it or not immaterial for the free passage of the water from the wheels that the raceway be of nearly uniform width and depth, and if it is not practicable to attain a uniform depth on account of the hardness of the earth or rock bottom, is it or not necessary to construct it of greater width in such portions?

Answer. It is.

Question 25th. What in your opinion would be the cost of widening and deepening the raceway at Valley falls, so as to permit the free passage, through its whole length, of the water adequate to the operation of 36,000 spindles, also of 54,000 and 72,000 spindles?

Answer. I can only give an opinion not founded upon calculation; I should think it might cost fifteen thousand dollars to widen and deepen it sufficiently to run 36,000 spindles; I should think it might cost twenty-five thousand dollars to widen and deepen it sufficiently to run 54,000 spindles; I should think it might cost thirty-five thousand dollars to widen and deepen it sufficiently to run 72,000 spindles.

Question 26th. What is the distance from Marchant's new mill to the rear of the abutment of the railroad bridge over the river?

Answer. About one hundred and seventy feet.

Question 27th. After appropriating so much of the Valley Falls mill estate in Smithfield to the construction of a raceway sufficiently large to discharge the water from 72,000 spindles, would that portion of it belonging to Chace be sufficient to accommodate the mills and other buildings adequate to the operation of 54,000 spindles, and to carry on the business necessarily connected with an establishment of that extent?

Answer. I should think it would be insufficient to accommodate that extent of business.

Question 28th. Will you state whether the plat marked A, and filed with this deposition, is a correct delineation of the Valley Falls mill estate in Smithfield; when, and by whom, it was made; how the bounds and dividing lines were ascertained; how the land belonging to the different parties is designated; how the old raceway is delineated; whether all the buildings and their positions are accurately located; whether the distances marked in said plat are correct, and upon what scale the plat is constructed; also, how the Allen lot was ascertained and located; also the turnpike, the railroad, and the trenches and streets. Is the new trench correctly delineated; what is its length as constructed; its depth and width; for what number of spindles will it furnish water advantageously, and is it constructed in a safe and permanent manner?

Answer. The plat marked A is a correct delineation of the Valley falls mill estate in Smithfield; it was made by me at different times during the last two months. Its bounds and dividing lines were ascer-

tained partly from measurement and partly from other plats. The land belonging to different parties is designated by being colored with different colors around the borders, as noted on the plat; the old raceway is delineated on the plat and marked "old raceway;" the buildings were located from actual measurement, and are correctly located; the distances marked on said plat are correct. The plat is constructed on the scale of fifty feet to the inch; the Allen lot was surveyed and located according to the courses and distances given in the deed. The railroad, the trenches, and streets are laid down partly from actual measurement partly by data furnished by other plats. The new trench is correctly delineated; its length and depth I have previously stated in answer to a former question. Its capacity I should think sufficient to operate thirty-five to forty thousand spindles. It appears to be construed so far in a safe and permanent manner.

Question 29th. State also whether the plat marked B, of the Cumberland side, is a correct delineation, how the bounds and boundary lines were ascertained; how the land of different owners is designated; whether the distances marked on the plat are correct, and upon what scale it is constructed; also, what is the character of the bank of the river below the turnpike on that side; whether there is any other practical mill site besides the one now occupied; whether the trench and raceway are large enough to accommodate more machinery than is now operated there, say 11,000 spindles; whether the raceway could be widened throughout its whole extent, and whether any additional amount of water power could be advantageously used by said Chace on that side of the river?

Answer. The plat marked B, of the Cumberland side, is a correct delineation. The bounds and boundary lines were ascertained by actual survey. The land owned by the Abbott run company is so marked on the plat. The remainder of the land belongs to Chace, except what is occupied by public highways. The distances marked on the plat are correct, and the scale of the plat is fifty feet to the inch. The bank of the river below the turnpike, on that side, is a high hill; height of land from forty to fifty feet above the bottom of the raceway. There is not, in my estimation, any other practical mill site except the one now occupied. I think the capacity of the trenches might be sufficient to accommodate more machinery, but the capacity of the raceway would be insufficient. The raceway could not be widened throughout its whole extent without incurring very great expense, owing to the high bank of the river, the situation of some of the buildings, and the location of the trench leading to the Abbott run mill pond, which is constructed near the said raceway, and is now covered with earth. I think that no material addition to the amount of the water power could be advantageously used by said Chace on that side of the river.

Question 30th. Is the sketch hereto annexed, marked C, a correct delineation of the situation of Marchant's wheels and of their relative positions to the bottom of the race and of the river, and to the dam

above and that below; and are the notes, measurements, and other remarks made on said sketch correct and true?

Answer. The sketch hereto annexed, marked C, is a correct profile delineation of the situation of Marchant's wheels, and of their relative positions to the bottom of the race and of the river, and to the dam above and that below; and the notes, measurements, and other remarks made on said sketch are correct.

The deponent, on the 1st of June, desired to correct his answer to the fourteenth question as given on the twenty-ninth of May, by saying, I have since ascertained that the amount of machinery operated at Central Falls is equal to twenty-two thousand six hundred and sixty-four spindles. The average amount of fall there is about ten feet. A portion of this machinery is stopped during the dry months, sufficient, I should think, to make the actual power of the river there equal to what I have before stated, that is, two thousand spindles to a foot of fall.

Cross examination resumed.

Question 17th. Does not the number of spindles which can be operated at a given place materially depend upon the manner of using the water, the construction of the wheel or wheels, and the kind of machinery operated?

Answer. It does.

Question 18th. Do you know, that during the last summer, Marchant was restricted to the use of one-fourth of the river, what proportion of the season he was so restricted, and how much machinery he operated at that time with his proportion of the water?

Answer. He was restricted to the use of one-fourth of the river for a short time during the last summer. I am not able to say how much machinery he operated with it.

Question 19th. Did not Chace at such time use the remaining three-fourths of the river on the Cumberland side, and did not it require all, and even more than three-fourths of the river to run all his machinery with ordinary speed.

Answer. Chace, during the same time, used the remaining three-quarters, excepting what was supplied to the Abbot Run mills; he was short of water to operate all his machinery a portion of the time.

Question 20th. Will it or not require the use of one-half or more, of the water power of the river in the summer season on the Cumberland side to supply the Abbot Run mills with their proportion, and run the machinery now in operation belonging to said Chace with ordinary speed.

Answer. It will in ordinary seasons.

Question 21st. Who was the contractor for building the railroad arch over the old raceway?

Answer. Story, Wood & Veder, were the contractors for the whole section; they underlet the work to Harvey Chace, as I understood, and he underlet it, or employed Mr. Luther of Fall river to do the work.

Question 22d. Is there any greater difficulty in providing sites for the increase of the machinery by the complainant on the Cumberland side of the river than there is for providing for the same upon the land of said Chace on the Smithfield side, if the new mills on the Smithfield side should be so built as to discharge the water into the old raceway?

Answer. I think the Smithfield side of the river would be preferable for mill sites, even if the mills discharged into the old raceway; I think here would be greater difficulty in providing suitable sites on the Cumberland than on the Smithfield side.

Question 23d. Do not the complainant and his son and agent own sufficient land on the Smithfield side of said river upon which to carry on the business incident to running fifty-four thousand spindles, provided they used the new trench built by them, and did not use the old raceway?

(Objected to by the counsel for the complainant as irrelevant."

Answer. They do.

Question 24th. How many spindles could be operated upon the Allen lot, according to estimates heretofore made by you, if any such estimates have been made; if not, state according to the best of your judgment.

Answer. I have never made any estimate of the number of spindles that could be operated upon the Allen lot; I should think if a mill were built upon that lot sufficiently large to occupy the whole lot conveniently, without having the tenements or other buildings upon the same lot, and the mill should be three stories high, it would contain from four to five thousand spindles, and if it were built higher than this, the number of spindles would be increased nearly in proportion to the number of stories added; if the tenements and other buildings required for the mill should be located on the same lot, there could not be operated, in my opinion, conveniently, more than two thousand spindles.

Direct examination resumed.

Question 31st. Does not the raceway upon the Cumberland side empty into the river above that upon the Smithfield side, and is there not fall in the river between the two places?

Answer. Yes.

Question 32d. Is there or not less available head and fall on the Cumberland side as the mill is located, and the water power used, than upon the Smithfield side, through the old raceway?

Answer. Yes.

Question 33d. Was not the last season one of unusual and long continued drought?

Answer. It was uncommonly dry.

SAMUEL B. CUSHING.

Cross examination resumed.

Question 25th. Of whom did you get your instructions to construct the arch in the raceway on the railroad track thirty feet wide?

Answer. The arch was built according to a plan prepared in the railroad office, I presume by Mr. Pratt or by his orders. Mr. Pratt was chief engineer of the road.

SAMUEL B. CUSHING.

Question 26th. Is the plat marked D a correct plat, and what is it intended to represent?

Answer. The plat is correct, and represents cross-sections taken through the old raceway, from the railroad arch to the mouth of the race, showing the width of the race at various points, its depth, height of banks, and was made in August last. It was not made with reference to this case, but to show the amount of excavation required to widen and deepen the race.

SAMUEL B. CUSHING.

Sworn to and subscribed on this third day of June, A. D. 1850, before me,

JOSEPH S. PITMAN,
Commissioner.

Witness's fees—

5 days' attendance,	$6 25
1 mile travel,	10
	6 35

I, Henry Jerauld, of the town of Pawtucket, in the county of Bristol, in the State of Massachusetts, of lawful age, being first duly sworn according to law, on oath depose and say:

1*st. Question by Thomas A. Jenckes, esq., for the complainant.*

What is the quantity of fall in each privilege at Pawtucket, and what number of spindles or other machinery reduced to spindles is operated on each?

Answer. The fall is about seven feet at the upper dam and about fourteen at the lower dam. It is not all occupied on the lower privilege; on the upper privilege it is. I do not know that I could say what it would carry. It would carry about twelve thousand spindles on the upper dam when the water is about at the top of the dam. We have it for about two months down to about the top of the dam, and so we know about what it will do, and our gates are so arranged that we can't draw it much below the top of the dam at any time when they are running above. The bottom of our gates only opens twelve inches below the top of the dam, so that we can only draw so low. We are running more than that for about ten months in the year. Something like sixteen thousand we run for ten months. The water for the whole upper dam is divided into $107\frac{4}{10}\frac{1}{0}$ parts, and that $7\frac{4}{10}\frac{1}{0}$ is taken round through the Sargent's trench, and used below the lower dam. The water for the lower dam is not all used in any form. As near as I have been able to figure or calculate, we can drive about

twenty-one hundred spindles to a foot of fall with the water at about the top of the dam. There is another thing which ought to be taken into account in this. Though we say we have seven feet fall we can't use but about six. We lose in all falls about one foot in getting the water on to the wheel and getting it off, so that we get but about six feet effective fall on the upper dam, and about thirteen on the lower dam. Our gates and our wheels are so much longer than the apertures that are allowed us, that we can drive ten months in the year sixteen thousand spindles, when the water is six inches on the dam. I suppose the lower dam would drive about thirty-five thousand spindles ten months in the year. There are about twenty thousand spindles there now in spindles. There is a grist mill on that dam which is equal to about a thousand spindles; two machine shops for punching nuts and washers, equal, I should think, together to about a thousand spindles; two trip hammer shops, blacksmith's shops with hammers, equal together to about a thousand spindles both of them; also a small furnace and a bobbin shop. I should think both of them would be equal to something like a thousand spindles.

Question 2d. Are those privileges used to their full capacity, or near it, in low or ordinary stages of the river?

Answer. The upper dam is; the lower dam is not used to its full capacity at those times. I should think it would drive nearly ten thousand spindles more in a common time.

Question 3d. What number of spindles are used on each privilege to a foot of fall, and is such use found to be near or quite the full capacity of the river at low or ordinary stages?

Answer. As I have before stated we have but about six feet effective fall on the upper dam, and thirteen on the lower. Calling the upper dam six feet effective fall, and the lower dam thirteen, we could drive, with the water at about the top of the dam, twenty-one hundred spindles to the foot, and about twenty-seven hundred spindles to the foot when the water is about six inches on the top of the dam, which we have about ten months in the year. Such use is found to be quite the full capacity of the river in such stages.

Ques. 4th. Will you explain what you understand by the ordinary flow of the river?

Ans. What I understand by the ordinary flow of the river, is what we have one year with another, taking the average of the years. We should not say a very wet season was an ordinary flow, or a very dry one. We frequently have very wet seasons for the ground, which do not affect the river at all, and at those times may have a very dry season for the river.

The counsel for the respondents objected to all the foregoing questions but the last, before they were propounded to the deponent, as irrelevant.

HENRY JERAULD.

Sworn to and subscribed on this thirty-first day of May, A. D. 1850, before me,

JOSEPH S. PITMAN,
Commissioner.

Witness's fees.

1 day's attendance, - -	$1 25
5 miles travel, - - -	50
	$1 75

I, Hiram Wilmarth, of the town of Smithfield, in the county of Providence, in the State of Rhode Island, of lawful age, being first cautioned and sworn, on oath depose and say—

Question 1st, by Thomas A. Jenckes, esq., for the complainant.

What is your occupation, and by whom and where are you employed?

Answer. I am employed by Henry Marchant as superintendent of a cotton manufacturing establishment at Valley Falls, in Smithfield, R. I.

Question 2d. What number of spindles is now in operation in said Marchant's mill?

Answer. Seventeen thousand nine hundred.

Question 3d. How many more may be added, to fill up the mills to their full capacity?

Answer. The mills are intended to operate twenty thousand spindles. I think their full capacity would equal, but not exceed, that number.

Question 4th. Are the wheels and main gearing adequate to the operation of that number of spindles when there is sufficient water?

Answer. I should say they were adequate to the operation of twenty thousand spindles.

Question 5th. For what portion of the year is one quarter of the ordinary run of the Blackstone river at Valley Falls adequate to the operation of twenty thousand spindles, and the corresponding machinery?

Answer. That is a matter of opinion; I cannot state positively; I should judge from seven to eight months.

Question 6th. Are the bulk-head gates of sufficient capacity to conduct to your wheels advantageously all the water you require for the operation of your mills?

Answer. No; I think they ought to be larger.

Cross examination.

Question 1st, by Charles S. Bradley, esq., for the respondents.

What is the present width and depth of the old raceway on the Smithfield side of the river at Valley Falls, in the various positions thereof?

Answer. I suppose it is about thirty-five feet wide above the rail-

road, and about thirty feet below; the depth is from twelve to fourteen feet below the top of the dam.

Question 2d. Through whose land does the same pass?

Answer. Through land claimed by Henry Marchant and Oliver Chace.

Question 3d. How wide and deep should the said raceway be, to discharge one half of the water of the Blackstone river freely.

Answer. Thirty feet wide, and deep enough to retain all the fall; that is, to get all the fall there would be from our mills to the pond, (this I mean at the ordinary state of the water,) I should suppose fourteen and a half feet below the top of the dam, would get all the fall there would be in the ordinary stage of the water.

Question 4th. How wide and deep to discharge three eighths of the water?

Answer. It might be some narrower, but the same depth; I cannot say how much narrower.

Question 5th. How wide and deep to discharge three quarters of the same?

Answer. I should say forty feet wide with the same depth.

Question 6th. What is the value of the land requisite to enlarge the raceway sufficiently for the purposes mentioned in your last answers.

Answer. In the two first cases no more land would be needed; in the last case the land would be worth from twenty-five to fifty dollars.

Question 7th. How long has the said raceway been used by Mr. Marchant? Has it been used during that time by any one else? What expenditure and improvements have been made by him which require the use of the same; when were they made?

Answer. I don't know how long said raceway has been used by him; I know it has been used during the last two years by him. It has not been used during that time by any one else. I should say from twelve to fifteen thousand dollars had been expended by him on improvements during the last two years, which require the use of said raceway; I mean by putting in new machinery, and improving the mills other ways.

Question 8th. Has any excavation been made or trench built, either in part or wholly, by the said Chace on said premises; if yea, where, when, what are the dimensions and location of the same?

Answer. There has been a trench dug and partly walled by him; it was dug on the south side of Marchant's mills. I was not there when it was dug; some of the wall has been put up since. I have been there within two years; it is about thirty feet wide, and about ten feet in depth below the top of the dam. It commenced at the Valley Falls turnpike, and I should think it was excavated perhaps six hundred feet in an easterly direction.

Question 9th. What is the purpose and expense of the same? State as nearly as you can.

Answer. I don't know what the purpose of it was; the expense was about ten thousand dollars according to my opinion.

Question 10th. Would the water drawn through the trench last mentioned be discharged most advantageously through said old raceway, or by some other outlet into the river? State fully the reasons for your opinion.

Answer. I should say further down the river than the old raceway; I think they would get more fall if emptied farther down.

Question 11th. Have you heard any statements from said Chace, or any agent of his, respecting the use and purposes of said trench on said raceway; if yea, from whom, when, and what were they?

Answer. I don't recollect that I have heard any one say anything about the use and purposes of the trench, but I have heard Harvey Chace say that he should abandon that raceway at the time it was understood that [the] new dam and the new trench should be made.

Question 12th. Have you heard any statements from said Chace, or any agent of his, respecting the use of the Allen lot, so called? If yea, state when, from whom, and what they were, and where said lot is located.

Answer. Harvey Chace proposed to me to dig a trench through that lot; it was some time during last summer and fall; I can't state the exact time. It was proposed to build a new dam below the bridge, which would be below the old one, and take a trench from that dam through the Allen lot, forty feet wide, to terminate in the trench now used by Marchant; then this projected trench, or trench which is partly dug now, was to come into Marchant's trench near the junction of this trench and Marchant's trench. The Allen lot is located on the north side of Marchant's mills, and on the east side of the Valley Falls turnpike.

Question 13th. Has said Marchant a steam engine in connexion with his works; if yea, of what power?

Answer. He has, of one hundred and eighty horse power.

Question 14th. How much water does the gauge allow him to draw into said raceway?

Answer. One quarter of the Blackstone river.

Question 15th. Is it practicable to divide the water in a raceway after it has left the wheel?

Answer. No, sir.

The counsel for the plaintiffs objected, before the cross examination commenced, to the questions relating to any declarations made by him or by his agents.

HIRAM WILMARTH.

Sworn to on the 11th day of May, A. D. 1850, before me,
JOSEPH S. PITMAN, *Com'r.*

Direct examination resumed.

Question 7th. Were not the statements of Harvey Chace, which you have referred to in your answers to the 11th and 12th cross inter-

rogatories, made with reference to an amicable settlement of all matters in dispute between the plaintiff and defendant, respecting the use of trenches and water ways, and the improvement of the water power at Valley Falls?

Answer. It was an agreement between Harvey Chace and Mr. Marchand that this new dam should be built, this trench should be made, and this raceway should be abandoned by Chase. I did not understand those statements there referred to to have been made with reference to an amicable settlement of all matters in dispute between those parties. Marchant was to relinquish the right which he claimed to the new trench as an off-set for Chace to relinquish his right to the raceway.

Question 8th. Will you explain more fully what you understand by the ordinary flow of the Blackstone river?

(Objected to by the counsel for the respondent as irrelevant.)

Answer. When there is neither a drought nor a freshet; I don't know that I can come any nearer to it than that; I should think there would be from four to six inches of water on the Valley Falls dam in an ordinary flow of the river, with the present machinery there in operation.

Question 9th. Is it not practicable to regulate the discharge of the water into a raceway to given limit, so as to effect a partition in the use of it between two or more parties in any given proportion?

(Objected to by the counsel for the respondents as irrelevant.)

Answer. I can't say; I never heard of such a thing; I never knew a case of such a kind.

Question 10th. What number of spindles are operated at Central Falls, and on each of the dams at Pawtucket, and how does the head and fall on those privileges compare with the head and fall at Valley Falls? State also, for what other purposes than cotton spinning the water-power is used at Central Falls and Pawtucket, and what number of spindles such power would be adequate to operate.

(Objected to by the counsel for the respondents as irrelevant.)

Answer. I do not know what number of spindles are operated at those places. I have been told that there is less head and fall at Central Falls than at Valley Falls. There is more water at Central Falls than at Valley Falls. I have no recollection of the difference. I never measured it. There is a machine shop and a bobbin shop at Central Falls, but I cannot tell what number of spindles the water-power used by them would operate. As to Pawtucket, I don't know definitely; I know there are machine shops and one bobbin shop there, and a blacksmith shop which used some power; there is a furnace and a grist mill also there; I cannot state the power they use.

Question 11th. Is the water-power at those places used to its full capacity, or near it, in low or ordinary stages of the river?

(Objected to by the counsel for respondents as irrelevant.)

Answer. I should think that in low stages of the river it was there used to its full capacity; in ordinary stages of the river, in what I should consider or suppose to be an ordinary flow, I should think it was not

used quite to its capacity at Central Falls. I don't know anything about Pawtucket.

Question 12th. Is not the land owned by Oliver Chace, adjoining the old raceway, valuable for mill sites, in connexion with the further improvements of his water-power at Valley Falls?

(Objected to by counsel for respondents as irrelevant.)

Answer. I should'nt say it was very valuable for mill sites.

HIRAM WILMARTH.

Cross examination resumed.

Question 16th. Does not the number of spindles which can be operated at a given place materially depend upon the manner of using the water, the construction of the wheel or wheels, and the kind of machinery operated?

Answer. It does.

Question 17th. Do you know that during the last summer Marchant was restricted to the use of one-fourth of the river, what proportion of the season he was so restricted, and how much machinery he operated at that time with his proportion of the water?

Answer. He was restricted a short time during the last summer to one-quarter of the river. I am not able to state what proportion of the season he was so restricted. I should say that he operated at that time about six thousand spindles with his proportion of the water.

Question 18th. Did not Chace at such time use the remaining three-quarters of the river on the Cumberland side, and did not it require all and even more than the three-quarters of the river to run all his machinery with ordinary speed?

Answer. A portion of the three-quarters, after Marchant's is set off, is used by the Abbott Run Company. I think sufficient to run three thousand spindles. Chace required the whole of the three-quarters of the river at that time, and there was not enough at that.

Question 19th. Will it or not require the use of one-half or more of the water-power of the river, in the summer season, on the Cumberland side, to supply the Abbot Run mills with their proportion, and run the machinery now in operation belonging to said Chase with ordinary speed?

Answer. It would require more than one-half of the river during some portions of that season for that purpose.

Question 20th. Who was the contractor for building the railroad arch over the old raceway?

Answer. I don't know.

Question 21st. Is there any greater difficulty in providing sites for the increase of machinery by the complainant on the Cumberland side of the river than there is for providing for the same upon the land of said Chace on the Smithfield side, if the new mills on the Smithfield side should be so built as to discharge the water into the old raceway?

Answer. I should say mills might be built on the Smithfield side of

the river, on the land of said Chace, discharging their water near the mouth of the old raceway with less difficulty than on the Cumberland side.

Question 22d. Do not the complainant, and his son and agent, own sufficient land on the Smithfield side of said river upon which to carry on the business incident to running fifty-four thousand spindles, provided they used the new trench built by them, and did not use the new raceway?

(Objected to by the counsel for the complainant as irrelevant.)

Answer. Yes.

Question 23d. How many spindles could be operated upon the Allen lot according to estimates heretofore made by you, if any such estimates have been made; if not, state according to the best of your judgment.

Answer. I should judge twenty-five hundred to the extent.

Direct examination resumed.

Question 13th. Does not the raceway upon the Cumberland side empty into the river above that upon the Smithfield side, and is there not [a] fall in the river between the two places?

Answer. Yes.

Question 14th. Is there or not less available head and fall on the Cumberland side, as the mill is located and the water power used, than upon the Smithfield side, through the old raceway?

Answer. Yes, there is less.

Question 15th. Was not the last season one of unusual and long continued drought?

Answer. Yes.

HIRAM WILMARTH.

Sworn to and subscribed on this third day of June, A. D. 1850, before me,

JOSEPH S. PITMAN,
Commissioner.

Witness's fees.

Four days attendance - - - - - - -	$5 00
Five miles travel - - - - - - - -	50
	$5 50

I, George Smith, of the town of Cumberland, in the county of Providence, in the State of Rhode Island, of lawful age, being first duly cautioned and sworn according to law, on oath, depose and say:

Question 1st by Thomas A. Jenckes, esq., for the complainant.

Do you know of any application having been made to Oliver Chace

or his agents for hiring the Allen lot and privilege; if so, when, by whom, for what purpose, and with what result?

Answer. I applied to Mr. Harvey Chace for the Allen lot and privilege. Mr. Brayton then was superintendent for Mr. Marchant, and applied with me. We talked of hiring it together. This was in the fore part of 1846. After we applied, Mr. Brayton said to me, one day, I mentioned to Mr. Marchant about having that privilege. This was some few days after we applied to Mr. Chace, and Mr. Marchant opposed it, and Mr. Brayton said he supposed the reason why he opposed it was that it would flow the water on to his, Mr. Marchant's, wheel. We were going to build a mill; that was the object of our hiring of it for a mill purpose. That rather stopped Brayton, as he being employed by Marchant, did not wish to do any thing, and Mr. Chace then proposed to let us have a privilege below there. Mr. Brayton then bought in at Cental falls *in* the Jenkins mill, and that put a stop to the whole of it. When we applied to Harvey Chace for the Allen lot, he agreed to let us have it, and if Mr. Marchant had not opposed it, we should probably have gone on with it. Mr. Brayton died some two years ago.

Question 2d. What is your occupation?

Answer. I am the superintendent of H. and S. B. Chace's mill at Valley Falls.

Question 3d. What is the number of spindles operated in Chace's mill on the Cumberland side, and is it occupied to or near its full capacity?

Answer. Ten thousand eight hundred and seventy-six; it is occupied nearly to its full capacity; the thirty-two looms we are now putting in will fill it. I mean the full capacity of the mill.

GEORGE SMITH.

Sworn to and subscribed on the first day of June, A. D. 1850, before me.

JOSEPH S. PITMAN,
Commissioner.

Witness's fees.

Two days attendance - - - - - - -	$2 50
Five miles travel - - - - - - - -	50
	$3 00

I, Daniel C. Mowry, of the town of Cumberland, in the county of Providence, in the State of Rhode Island, of lawful age, being first cautioned and sworn, on oath depose and say:

Question 1st by Thomas A Jenckes, esq., for the complainant:

Were you employed by Henry Marchant to put in additional bulkhead gates in the trench leading to his mills on the Smithfield side of

the river at Valley falls; and if so, when, and what number of gates were put in?

Answer. I was so employed. I think it was in the year 1838; I put in two gates; it was in 1838.

Question 2d. Was the trench itself widened or altered at any other place than at the bulk-head?

Answer. At the time of putting in the gates the trench was made as wide again as before at the gates, and was widened for the distance of from twenty to twenty-five feet each way from the gates. It was not widened elsewhere at the time of putting in the gates; it has been widened since.

Cross examination.

Question 1st by Charles S. Bradley, esq., for the respondents:

What is the present width and depth of the old raceway on the Smithfield side of the river at Valley falls, in the various portions thereof?

Answer. The raceway above the railroad is about thirty-five feet wide; below, I guess, rather scant thirty. I guess it won't average more than twenty-nine feet; there are places in it where it is thirty. It is about ten feet deep through the land, but from the top of the dam it would be about from twelve to fourteen feet deep; the upper part of the raceway is, I believe, twelve feet. It is higher than the lower, which is probably fourteen.

Question 2d. Through whose land does it pass?

Answer. Partly through Marchant's and partly through Oliver Chace's. It is said they own it; I expect they do; they occupy it.

Question 3d. How wide and deep should said raceway be to discharge one-half of the water of the Blackstone river freely?

Answer. I should think that a trench thirty-feet wide, with a foot lower than the fall of the river, so that water should run off on water instead of on gravel, thus not creating friction, would discharge one-half of the water in an ordinary stage of the river.

Question 4th. How wide and deep to discharge three-eighths of the water?

Answer. It would want to be the same depth, but less width. I could only guess at how much less. I might figure if I knew exactly how much water was discharged into it. I could tell pretty nearly.

Question 5th. How wide and deep to discharge three-quarters of the same?

Answer. It would want to be the same depth; it ought to be forty feet wide.

Question 6th. What is the value of the land requisite to enlarge the raceway sufficiently for the purpose mentioned in your last answer?

Answer. If there should be a mill erected down there, it may become valuable; it might be worth a good deal of money. In the present state the land is not worth a great deal; I would not give more than twenty-five dollars for it.

Question 7th. How long has said raceway been used by Mr. Marchant; has it been used during that time by any one else; what expenditures and improvements have [been] made by him which requires the use of the same; when were they made?

Answer. It has been used by him ever since September, 1830; I guess it has not been used by any one else to operate spindles. Mr. Chace used it three or four days a year or two ago to let his water down. Mr. Marchant has erected two mills, a large weave shop, and built a great many houses since he come there; has put in an engine, has filled his two mills with machinery; I have no idea but that all this had cost him two hundred and fifty or sixty thousand dollars, according as I have heard them tell along, their expenditures and improvements have been going on ever since he first went there, a gradual increase; he has put in more or less machinery every year; I believe he has not got it quite full yet—the last mill.

Question 8th. Has any excavation been made or trench built, either in part or wholly, by the said Chace on said premises; if yea, where, when, what are the dimensions and location of the same?

Answer. Yes; it begins down to two hundred and fifty feet east of the railroad; it runs up under the railroad, and goes about twenty feet past Marchant's old stone mill; it was begun in the November following the commencement of the building of the Providence and Worcester railroad; the last work that was done on it was in last of July, or might have gone into August; it is thirty feet wide, and was designed to be dug ten foot below the top of the dam; as we went towards the dam we had to rise a little, six inches perhaps, to let the water run away; the wall was to be thirty feet wide at the top, and inch battening to the foot, making the trench twenty-nine feet wide at the bottom.

Question 9th. What is the purpose and expense of the same? State as nearly as you can.

Answer. I can tell pretty near what it cost; the purpose was for erecting a mill below; I have heard it said so, and suppose it was for that purpose; I was the loser of some money in it; they paid me something over eight thousand dollars; it cost more money than that.

Question 10th. Would the water drawn through the track last mentioned be discharged most advantageously through said old raceway or by some other outlet into the river? State fully the reasons for your opinion.

Answer. By some other outlet the water would be carried into Central Falls pond, and would by so doing retain a little more fall; if the mill was set where it was designed to be set, you could carry it no other way; it could go to no other place; I don't know how it could be got to any other place without a great deal of trouble; it could be carried to no other place without losing some fall.

Question 11th. Have heard any statements from said Chace, or any agent of his, respecting the use and purposes of said trench, or said raceway; if yea, from whom, where, and what were they?

Answer. I have heard Samuel Chace, a little after the railroad be-

gun, say that they intended to put up a mill to run fifteen thousand spindles; I have heard Harvey Chace say they intended to put a mill there, but he did nor say how big.

Question 12th. Have you heard any statements from said Chace, or any agent of his, respecting the use of the Allen lot, so called? If, yea, state when, from whom, and what they were, and where said lot is located.

Answer. I don't know the lot; I have not; I know no lot by that name.

Question 13th. Has said Marchant a steam engine in connexion with his works; if yea, of what power?

Answer. He has; of one hundred and eighty horse power I believe.

Question 14th. How much water does the gauge allow him to draw into said raceway?

Answer. A quarter of the river; I suppose that was the decree of the court on which they put the gages in.

Question 15. Is it practicable to divide the water in a raceway after it has left the wheel?

Answer. That is something I never knew of; I should think not.

(The counsel for the plaintiffs objected to the question relating to any declarations made by him or by his agents.)

DANIEL C. MOWRY.

Cross examination resumed.

Question 3d. Is it or not practicable to regulate the discharge of the water into a *a* raceway to a given limit, so as to effect a partition in the use of it between two parties in any given proportion?

Answer. I never knew of any case of that kind, so that I cannot say whether it is or not; I think it would be practicable in this case.

Question 4th. Do you know of any other raceway which is owned or used in common; if so, where and what is its width and length, and how many spindles, and what other machinery are operated by the water discharged into it?

Answer. I don't know of any other.

Question 5th. Will you explain more fully what you understand by the ordinary flow of the Blackstone river?

Answer. What I mean to be understood by the ordinary flow of the Blackstone river is, what machinery a man would be likely to locate on said stream which would run through the season without stopping much; that with which a man would be likely to load the stream; he would not be likely to load it with more than it could carry, without stopping much through the season.

Question 6th. What in your opinion was the cost of constructing the present raceway?

Answer. It cost from ten to twelve thousand dollars.

Question 7th. Is it or not deeper below the railroad than between the railroad and the Allen lot or upper end, and is any portion of the

bottom of the race above the railroad composed of rock or hard earth; and if so, what portion, and would it or not be difficult to excavate; and what obstructions exist to the widening of the raceway above and at the railroad?

Answer. It is deeper below the railroad; it is lower on the level of the fall of that stream; I don't know that it is any deeper on the earth; a large portion of the bottom of the race above the railroad is rock; I do not know as I could tell what portion; it is more rock than anything else; I have dug in there a good many times; it is composed, most all of it, of slate and rotten stone and this blue marl; there is a good deal of that mixed in with it; I don't know how to answer, whether it would or not be difficult to excavate; there is nothing that's impossible; I have done a good many jobs worse than that; a good many persons would call it difficult, but I should'nt; there is not anything but what can be done; there is an engine-house that stands on the edge of the raceway, a stone building—the chimney stands there—for an engine rated to be one hundred and eighty horse-power; then there is a brick arch turned over the railroad; that it is sprung on granite and range work; there are no more obstructions, except the railroad embankment of 20 feet in height, of common railroad slope, a foot and a half to the foot; so that the bank will stand.

Question 8th. What portion of the year is the quantity of water in the Blackstone river adequate to the operation of 100,000 spindles at Valley Falls?

Answer. About half the year; sometimes we have a flow of water in abundance about six months in the year, but it does not always come the same six months in a year; it would run a hundred thousand *to*-day, probably more, but that is not often the case at this season.

Question 9th. How wide and deep should a raceway be constructed at Valley Falls to discharge the water required to operate 36,000 spindles?

Answer. It ought to be at least sixty feet wide, and deep enough to take all the head and fall there is there, that is fourteen feet and a half.

Question 10th. How wide and deep to discharge the water from 54,000 spindles; also from 72,000?

Answer. At least ninety feet wide, and as deep as before for the first number, and at least one hundred and twenty feet wide, and as deep as before for the last.

Question 11th. Is it or not material for the free passage of the water from the wheels that the raceway be of nearly uniform width and depth; and if it is not practicable to attain a uniform depth on account of the hardness of the earth or rock bottom, is it or not necessary to construct it of greater width in such portions?

Answer. The raceway should be of uniform width and depth to clear the water from the wheels, so as not to cause back-water; it is necessary, where you cannot obtain the required depth, to increase the width to free the water from the wheels.

Question 12th. What, in your opinion, would be the cost of widen-

ing and deepening the raceway at Valley Falls so as to permit the free passage, through its whole length, of the water adequate to the operation of 36,000 spindles; also of 54,000 and 72,000 spindles?

Answer. To widen the raceway for 36,000 spindles, it would be necessary to build another railroad arch, and erect a temporary bridge for the cars to pass over while it was being constructed; to dig down the embankment, take down the engine-house and chimney, remove the engine, besides widening the trench the whole way thirty feet, all of which makes a great opening to get at; I cannot therefore say at present; it would cost ten thousand dollars to move the natural earth which now stands there, to make it thirty feet under and wall it up, saying nothing about the above obstructions; for widening the raceway from its present condition to permit the free passage of the water adequate to the operation of 54,000 spindles, saying nothing about the above obstructions, it would cost sixteen thousand dollars; for 72,000 spindles, it would cost twenty-two thousand dollars, under the same restrictions as above.

Question 13th. After appropriating so much of the Valley Falls Mill estate in Smithfield to the construction of a raceway sufficiently large to discharge the water from 72,000 spindles, would that portion of it belonging to Chase be sufficient to accommodate the mills and other buildings adequate to the operation of 54,000 spindles, and to carry on the business necessarily connected with an establishment of that extent?

Answer. There is not enough there now; not sufficient without being crowded; of course there would not.

DANIEL C. MOWRY.

Cross examination resumed.

Ques. 16th. Does not the number of spindles, which can be operated at a given place, materially depend upon the manner of using the water, the construction of the wheel or wheels, and the kind of machinery operated?

Ans. Yes, sir.

Ques. 17th. Do you know that, during the last summer, Marchant was restricted to the use of one-fourth of the river; what proportion of the season he was so restricted, and how much machinery he operated at that time with his proportion of the water?

Ans. I know he was so restricted at that time; I think for a month during the summer. I do not know how much machinery he then operated; I should guess some seven or eight thousand spindles. I have no means of knowing exactly.

Ques. 18th. Did not Chace, at such time, use the remaining three-fourths of the river on the Cumberland side; and did it not require all, and even more than the three-fourth of the river, to run all his machinery with ordinary speed?

Ans. He did so use it at that time, and he did not get ordinary speed at that.

Ques. 19th. Will it or not require the use of one-half, or more, [of] the water power of the river in the summer season, on the Cumberland side, to supply the Abbott run mills with their proportion, and run the machinery now in operation belonging to said Chace with ordinary speed?

Ans. That would be about a pattern for one-half of the Blackstone river, in the ordinary flow of the river; I think it would require one-half for that purpose.

Ques. 20th. Who was the contractor for building the railroad arch over the old raceway?

Ans. Story, Wood & Veder were first contractors on the road; I caused all the work to be done on that section of the road, in connexion with Harvey Chace. We were kinder connected, but not partners. Luther & Morse, of Fall river, were employed by Chace and myself, though my name only was known, to do the mason work, under the direction of Samuel B. Cushing, the engineer on the road.

Ques. 21st. Is there any greater difficulty in providing sites for the increase of the machinery by the complainant, on the Cumberland side of the river, than there is for providing for the same upon the land of said Chace on the Smithfield side, if the new mills on the Smithfield side should be so built as to discharge the water into the old raceway?

Ans. There are no mill sites on the Cumberland side, more than there are now occupied; they have got about all the land occupied that there is. They might enlarge the buildings some. If the mill for the new trench was set where they designed to set it, from that mill west to the railroad, they can take the water out and empty it into the old raceway if they choose, the same as Marchant now empties it in; they can erect as many buildings for mills there as the land would hold.

Ques. 22d. Do not the complainant, and his son, and agent, own sufficient land, on the Smithfield side of said river, upon which to carry on the business incident to running fifty-four thousand spindles, provided they used the new trench built by them, and did not use the old raceway?

(Objected to by the counsel for the complainant as irrelevant.)

Ans. I should think not land enough inside of the Valley Falls estate; but, upon the outside of the estate, the land is said to be owned by Harvey Chace's wife. If that land was taken in there would be sufficient. I hire that land of Harvey Chase.

Ques. 23d. How many spindles could be operated upon the Allen lot, according to estimates heretofore made by you, if any such estimates have been made? If not, state according to the best of your judgment.

Ans. I know that lot now, though I did not before when giving the first part of my deposition, by that name; I had always heard it called the little mill lot, or the grist mill lot. A building might be erected on that lot equal to two hundred feet long and forty feet wide; the lot has an L in it, and as high as they choose. As to how many spindles can be operated there, depends on how much of this lot is used for a trench,

or trenches, and who empties water into the present raceway, and how much is emptied in. I am unable to state how many spindles could be operated, as the number would depend upon the above circumstances.

Direct examination resumed.

Ques. 14th. Does not the raceway, upon the Cumberland side, empty into the river above that upon the Smithfield side; and is there not fall in the river between the two places?

Ans. Yes.

Ques. 15th. Is there not less available head and fall on the Cumberland side, as the mill is located and the water power used, than upon the Smithfield side, through the old raceway?

Ans. Yes.

Ques. 16th. Was not the last season one of unusual and long continued drought?

Ans. Yes.

DANIEL C. MOWRY.

Sworn to and subscribed before me, the third day of June, A. D. 1850.

JOSEPH S. PITMAN, *Comm'r.*

Witness's fees—

Four days attendance,	$5 00
Seven miles travel,	70
	$5 70

Deed—Oliver Chace to Providence and Worcester Railroad Company.

Know all men by these presents, that I, Oliver Chace, of Tiverton, in the county of Newport, and State of Rhode Island, for and in consideration of the sum of three hundred and sixty-eight dollars to me paid by the Providence and Worcester Railroad Company, the receipt whereof I do hereby acknowledge, have remised, released, and forever quit claim, and by these presents do remise, release, and forever quit claim, unto them, the said Providence and Worcester Railroad Company, their successors, and assigns, forever, all the right, title, interest, and property, claim, and demand which I now have, or of right ought to have, or claim, in and to four certain lots or parcels of land, bounded and described as follows, namely:

The first, situate in the village of Valley Falls, in Smithfield, in the county of Providence, and State aforesaid, extending from land late of the heirs of Daniel Hunt northerly about one hundred [and] ninety-eight feet, to the northerly line of Track street, represented on a plat hereunto annexed, and fifty-eight feet wide, measuring at right angles to the centre line of the railroad of said company, as located and lying equally on each side thereof.

In the above line read words "as located" after word company.

The second lot, situate in said village and town adjoining the first lot, and bounded southerly by said Track street, from which it extends northerly to land of Henry Marchant, or to the Blackstone river, and bounded easterly by a line drawn parallel with said centre line, and twenty-nine feet easterly at right angles therefrom, and westerly by land of said Marchant, being all the land I own between said Trench street and Blackstone river, and lying between said parallel line and land of said Marchant. Said railroad company is to build a passage under their road ten feet wide, for the use of my quarry; to make a suitable passage or passway over said road at said Trench street, and a like suitable passway under said road at Trench street; the right of passing on said track and Trench street is reserved by the grantor; and so to construct their road, in crossing the trenches and raceways, as not to injure them or obstruct the passage of water therein, the full right of which is reserved by the grantor; also to build a slope wall on said parallel line from Trench street to said river, except across Trench street, and allow the grantor, at any time hereafter, to set a building or buildings, projecting over the top of said wall two feet or less.

The third lot is situate in Cumberland, in said county of Providence, and extends from said Blackstone river, northerly, to land of James M. Patt, about seven hundred and fifty feet, and fifty feet wide, lying equally on each side of said centre line, reserving therefrom the passage of the water from my mills unobstructed.

The fourth lot is situate in said Cumberland, and extending from land of Benjamin Slocum, northerly, about two hundred and eighty feet, to land of Abby Simmons, and fifty feet wide, lying equally on each side of said centre line.

To have and to hold the same, with all the rights, privileges, and appurtenances thereof, or thereunto appertaining, to them, the said Providence and Worcester Railroad Company, their successors, and assigns, forever. And I, the aforenamed Oliver Chace, for myself, and for my heirs, executors, and administrators, do covenant with the said Providence and Worcester Railroad Company, their successors, and assigns, that I will warrant and defend the afore described premises to them, the said Providence and Worcester Railroad Company, their successors, and assigns, forever, against the lawful claims and demands of all persons claiming by, through, or under me. Said company is to fence said road on both sides, and forever keep the same in repair. The centre line above referred to is the centre line of a double track railroad, and the track now building is the west track thereof.

And I, Patience, wife of the above named Oliver Chace, for and in consideration of the sum paid as aforesaid, do hereby release and forever quit-claim unto them, the said Providence and Worcester Railroad Company, their successors, and assigns, forever, all my right of dower in and to the above quit-claimed premises.

In witness whereof we have hereunto set our hands and seals, this twenty-ninth day of 6 mo., (June) A. D. 1846. Signed, sealed, and

delivered in the presence of—the words "the right of passing on said track and trench streets is reserved by the grantor," and interlined between the thirtieth and thirty-first lines before signing. Also the words "the full right of which is reserved by the grantor, " between thirty-second and thirty-third line. Also the words "reserving therefrom the passage of the water from my mills unobstructed," between forty-first and forty-second lines.

OLIVER CHACE, [L. S.]
PATIENCE CHACE. [L. S.]

HARVEY CHACE,
LUTHER LINCOLN.

NEWPORT, *sc.*

TIVERTON, *June* 29, 1846.

Then came Oliver Chace, the signor and sealer of the aforewritten deed by him subscribed, and acknowledged the same to be his free voluntary act and deed. Before me—

WM. P. SHEFFIELD,
Justice of the Peace.

Received for record July 1st, A. D. 1846, at five o'clock, p. m., and recorded July 7th, 1836. [1846.] By

ORIN WRIGHT, *T. clerk.*

TOWN CLERK'S OFFICE,
Smithfield, May 29th, A. D. 1850.

I certify that the aforegoing is a true copy from Smithfield registry of deeds, book No. 24, and pages 133 and 134, duly compared.

Witness, STAFFORD MANN,
Town clerk.

Certificate of Town clerk of Smithfield.

TOWN CLERK'S OFFICE,
Smithfield, March 13, 1850.

I hereby certify that I have examined the record of deeds in this office from this date back to the first day of February, A. D. eighteen hundred and thirty-nine, and I find no conveyance of real estate on said records to Oliver Chace, except a deed from Philip Allen, Isaac Brown, and Zachariah Allen, assignees of Crawford Allen.

Witness, STAFFORD MANN,
Town clerk.

Deed—A. and I. Wilkinson to William Harris et al.

To all people to whom these presents shall come: We, Abraham Wilkinson and Isaac Wilkinson, of North Providence, in the county of Providence, and State of Rhode Island, and Providence Plantations, manufacturers, send greeting:

Know ye that we, the said Abraham Wilkinson and Isaac Wilkin-

son, for and in consideration of the sum of one thousand two hundred and fifty dollars, to us in hand before the ensealing hereof well and truly paid by William Harris, Samuel B. Harris, and Daniel G. Harris, all of said North Providence, county and State aforesaid, manufacturers, the receipt whereof we do hereby acknowledge and ourselves therewith fully satisfied, contented and paid, and thereof, and of every part and parcel thereof, do exonerate, acquit, and discharge them, the said Wm. Harris, Samuel B Harris, and Daniel G. Harris, heirs, executors and administrators forever, by these presents; have given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents do freely, fully, and absolutely, give, grant, bargain, sell, alien, enfeof, convey, and confirm, unto them, the said William Harris, Samuel B. Harris, and Daniel G. Harris, their heirs and assigns forever. Four certain tracts or parcels of land, situated and lying in the southernmost part of the town of Cumberland, in the same county and State aforesaid, and adjoining Pawtucket river at a place called the Valley Falls. The first is a mill lot, beginning at a stake and stones in the bank of said river which is just two hundred feet below the abutment of the great bridge down stream; thence running easterly down stream on the bank of said river, two hundred feet, to a stake and stones standing in the bank of said river; thence turning and running north eighty-five degrees east, one hundred feet to a fifty feet street, to be laid out and made by the grantors; thence turning and running west parallel with the river line two hundred feet to a stake and stones for a corner; thence turning and running south one hundred feet to the first mentioned bound or corner.

The second tract or parcel of land, beginning at a stake and stones on the northwardly side of said street, which is north eighty-five degrees east, and just fifty feet from the northeast corner of the first described lot; thence turning and running east nearly at right angles eighty-four feet to a stake and stones for a corner; thence north eighty-five degrees east, twenty-six rods and fifteen links to a stake and stones standing in the fence, as it now stands, adjoining land of John Grant; thence south seventy-seven and a half degrees west, eighteen rods, as the fence now stands, to a stake and stones for a corner; thence south parallel with the eastwardly line until it comes to the northwardly side of said street, which is one hundred and fifty feet from the first bound in the first described lot on the bank of the river; thence turning and running east, bounding southwardly on said street two hundred feet to the first mentioned bound or corner. The third tract or parcel of land is forty feet square, bounding west on the Valley Falls turnpike road, and north on said fifty feet street about one hundred and ninety feet from the front of the abutment of the great bridge.

The fourth tract or parcel of land, lying and being on the westerly side of said turnpike road about two hundred and fifty feet from the front of the abutment of said bridge, and is ninety-two feet on the front, and is to extend back one hundred and twenty-two feet, keeping the same width.

And the said grantors further grant, bargain, sell, and convey, unto the said grantees, one undivided twelfth part of the waters in Pawtucket river, for any use they may please to make of it, except for a grist mill for grinding of grain, which we, the grantors, reserve for ourselves. Also one undivided twelfth part of the main river dam and an undivided sixth part of the head dam, flumes and raceways, on the Cumberland side of the river, which the grantors are to dig and complete in good order, above and below, so as they will meet each other, to convey the waters to and from the first described mill lot. The grantees are to leave through their mill lot a twenty feet sluiceway to conduct the waters to the grantors' other land below or down stream, not within fifty feet of said river. Also a sluiceway, twelve feet wide, through said lot, to convey the water to any other works that the grantors may at any time hereafter erect above; and in case the grantees neglect so to do, we, the grantors, reserve the right to go on the mill lot and dig it through; we, the grantors, also sell and convey unto the said grantees a right to all the stone on about one acre of land lying in the bend of the river, at the foot of the valley, at the head of the old brown trench, about thirty rods west of the great bridge, at the Valley Falls, in the town and State aforesaid, bounded as follows: Beginning at a white oak tree marked and running south sixty degrees west, fourteen rods to the fence, and then with said fence and margin of the upland, and continuing southerly and easterly until it comes to a stake and stones for a corner, wherein a point running south forty degrees east, ten rods from the first mentioned bound, will come, and then to the first bound. The two first described lots in this deed contain, by estimation, three acres of land, be the same more or less.

To have and to hold the said granted and bargained premises, with all the appurtenances, privileges, and commodities to the same belonging, or in any wise appertaining, to them, the said William Harris, Samuel B. Harris, and Daniel G. Harris, their heirs and assigns forever, to them and their only proper use, benefit, and behoof forever; and we, the said Araham Wilkinson and Isaac Wilkinson, for us, our heirs, executors, and administrators, do covenant, promise, and grant, to and with the said William Harris, Samuel B. Harris, and Daniel G. Harris, their heirs and assigns, that at and before the ensealing hereof, we are the sole, true, and lawful owners of the above bargained premises, and are lawfully seized and possessed of the same, in our own proper right, as good, perfect, and absolute estate of inheritance in fee simple, and have in us good right, full power, and lawful authority to grant, bargain, sell, convey, and confirm the said bargained premises in manner as aforesaid. And that the said William Harris, Samuel B. Harris, and Daniel G. Harris, their heirs and assigns, shall and may, from time to time, and at all times forever hereafter, by force and virtue of these presents, lawfully, peaceably, and quietly have, hold, use, occupy, possess, and enjoy the said demised and bargained premises, with the appurtenances free and clear, and freely and clearly acquitted, exonerated, and discharged of and from all and all manner of former or other

gifts, grants, bargains, sales, leases, mortgages, wills, entails, jointures, dowries, judgments, executions, and incumbrances, of what name or nature soever, that might in any measure or degree obstruct or make void this present deed.

Furthermore, we, the said Abraham and Isaac Wilkinson, for us, our heirs, executors, and administrators, do covenant and engage the above demised premises to them, the said William Harris, Samuel B. Harris, and Daniel G. Harris, their heirs and assigns, against the lawful claims or demands of any person or persons whatsoever, forever to warrant, secure and defend by these presents.

Furthermore, we, Lydia Wilkinson and Lois Wilkinson, wives of the said Abraham Wilkinson and Isaac Wilkinson, do hereby relinquish all our right of dower and power of thirds in the above described premises.

In testimony whereof we do hereunto set our hands and seals, this thirteenth day of September, in the year of our Lord one thousand eight hundred and thirteen.

ABRAHAM WILKINSON, [L. S.]
ISAAC WILKINSON, [L. S.]
LYDIA WILKINSON, [L. S.]
LOIS WILKINSON. [L. S.]

Signed, sealed, and delivered, in presence of us—
PARDON SAYLES,
SAMUEL GREEN.

N. B. The above interlineations were made before the signing of the above deed.

PROVIDENCE, *sc.*

N. PROVIDENCE, *October 2d*, 1813.

Then personally appeared the within named Abraham Wilkinson and Isaac Wilkinson, and acknowledged the within to be their free act and deed, hand and seal, before me,

JAMES MASON,
Justice of the Peace.

PROVIDENCE, *sc.*

Cumberland, October 18, A. D. 1813, at 9 o'clock, a. m., then received the foregoing instrument, and recorded it accordingly.

Attest: STEPHEN JOSLIN,
Town clerk.

TOWN CLERK'S OFFICE,
Cumberland, Jan. 10, 1850.

I certify the foregoing to be a true copy from the records in this office.

L. B. ARNOLD, *Town clerk.*

Deed to Crawford Allen, from Farmers and Mechanics' Bank.

To all people to whom these presents shall come, greeting:

Whereas Abraham and Isaac Wilkinson, both of North Providence, in the county of Providence, in the State of Rhode Island and Providence Plantations, manufacturers, on the thirteenth day of June, A. D. eighteen hundred and twenty-nine, by their deeds poll of that date, by them duly executed, acknowledged, and delivered and recorded, for a valuable consideration mentioned in said deed, sold and conveyed in fee simple unto the Farmers and Mechanics' Bank, then located and transacting business in said North Providence, now located and transacting business in Providence, in said county, certain real and personal estate, situated and being in said Cumberland, in said county, at a place called Valley Falls, the part of which said estates herein intended to be conveyed, is hereinafter described; and whereas conditions were annexed to said deed from the said Abraham and Isaac, that they, or either of them, heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, to the said Farmers and Mechanics' Bank, all such sum or sums of money, debts, and responsibilities of every kind, which said grantors, as a company, or either or both of them, as individuals, jointly or singly, or which the Valley Falls Manufacturing Company, or the Albion Manufacturing Company, did, or should owe, or be liable for as principal or endorser, or surety, or in any other way, to said Farmers and Mechanics' Bank, and should indemnify and save harmless the said bank against all costs and damages which might accrue in consequence of such debts and responsibilities, that their said deeds should be void, or else remain in full force and virtue.

And whereas the said Abraham and Isaac, in the said conditions, did constitute and appoint the said Farmers and Mechanics' Bank to be their true and lawful attorney, with power irrevocable, in their own names to sell, convey, and dispose of all and singular the estates and property described and conveyed in their said deeds, and to make and execute good and sufficient deeds thereof, and to collect and receive the proceeds thereof, and from and out of said proceeds to pay and discharge all the aforesaid sums of money, debts, and responsibilities, with the interest thereon, with all the necessary and incidental costs and damages and expenses, and to sell said estate and property at public or private sale at the discretion of said bank, on giving not less than six months public notice thereof, reference being had to said deed for a more particular description of said deed, conditions, and powers of attorney aforesaid.

And whereas the conditions of said deeds have become and have been long since broken, to wit, ever since the 10th day of July, A. D. eighteen hundred and twenty-nine; and whereas the said Farmers and Mechanics' Bank have, since the conditions in said deeds have become broken as aforesaid, to wit, on the day of the date of this deed made private sale of a part of the real and personal estates, conveyed to said

bank in said deeds, which said part is hereinafter described, unto Crawford Allen, of Providence, county and State aforesaid, having advertised the sale of said premises, in the Providence Journal, for more than six months before said sale, by force and virtue of all which, as herein before written, and in conformity therewith.

Now, know ye, that the Farmers and Mechanics' Bank, for and in consideration of the sum of five thousand seven hundred and fifty-eight dollars thirty-three cents, to us well and truly paid by the said Crawford Allen, the receipt whereof we do hereby acknowledge, do hereby give, grant, remise, release, and forever quit-claim, unto the said Crawford Allen, his heirs and assigns forever, all the right, title, interest, property, claim, and demand of the said Abraham and Isaac Wilkinson, and of the said Farmers and Mechanics' Bank, in and to the following lands and water privileges, at a place in Cumberland called Valley Falls, viz: One lot of land, lying between David G. Harris, Valley Falls estate, and the Abbott Run estate, so called, and is bounded as follows: Beginning at the southeast corner of said Harris mill lot, on the Blackstone river, at a stake and stones; thence northerly, bounding westerly on said Harris mill lot, about one hundred and fifty feet to a contemplated highway, as laid on the plat made by Richard S. Scott, dated the eleventh day of August, A. D. 1830, and to be recorded, reference thereto being had; thence easterly, bounding northerly on land belonging to said Harris, about eighty-four feet to a corner; thence northerly, bounding westerly on land of said Harris, and crossing said contemplated highway about four hundred eighty-eight feet, more or less, to the north line of the Hatch purchase, (so called;) thence easterly on the north line of the Hatch purchase, across the road to the northwest corner of the Abbott Run estate; thence running southwesterly, bounding easterly on said Abbott Run estate, and land latterly owned by Crawford Titus, to the Blackstone river; thence up said river to the first mentioned bound, together with two-twelfths of the water of the Blackstone river, and the same interest in the dam and pond and waterways thereto belonging. Also, one other lot of land, fronting partly on the Valley Falls turnpike, and partly on said contemplated highway, bounded as follows, viz.: Beginning on said Valley Falls turnpike road, at the northwest corner of the forty-foot lot belonging to the said Daniel G. Harris; thence northerly, bounding westerly on said turnpike road sixty feet; thence easterly at right angles from said turnpike road one hundred feet; thence southerly, a parallel line with said turnpike, one hundred feet to said contemplated highway; thence westerly on said highway to a lot sixty feet, now owned by said Daniel G. Harris; thence northerly, bounding westerly on said last mentioned lot, forty feet to a corner; thence westerly, bounding southerly on said last mentioned lot forty feet, to the first mentioned bound. Also one other lot, lying nearly opposite on the westerly side of said turnpike road, bounded as follows: Beginning at the southeast corner of a house lot belonging to said D. G. Harris, on the westerly side of said turnpike road; thence southerly, bounding easterly on said turn-

pike road, one hundred feet; thence westerly, a straight line parallel with the southerly line of the house lot last mentioned, about one hundred and twenty-five feet to a point which will range with the rear line of said house lot; thence northerly, to the southwest corner of said house lot; and thence easterly, bounding northerly on said house lot to the first mentioned bound, one hundred twenty-two feet, together with all the rights and privileges, appurtenances to the same; and for a more full description of said lots of land reference is had to said plat.

To have and to hold said granted premises to him, the said Crawford Allen, his heirs and assigns forever, together with all the privileges and appurtenances thereof, to his and their use and behoof forever; and the said Farmers and Mechanics' Bank, for themselves, their successors and assigns, and for and in behalf of the said Abraham and Isaac Wilkinson, their respective heirs, executors, administrators, and assigns, do covenant with the said Crawford Allen, his heirs and assigns, that they have good right to sell and convey the same, and that they will warrant and defend the same to him, the said Crawford Allen, his heirs and assigns forever, against the lawful claims of all persons claiming by, through, or under said bank. And it is expressly understood and agreed between the parties hereto, that the claims of Timothy W. Dexter and Jeremiah Whipple for the flowage of the water power herein conveyed, are to be settled by the grantors herein named, and that the grantor is not to be held accountable therefor, and that the strip of land for said contemplated highway, running from said Valley Falls turnpike along the north end of said Harris's white factory to the Abbott Run estate, as laid down on said plat made by said Richard S. Scott, and herein before mentioned, shall be, and hereby is, appropriated for that purpose, and shall be forever kept open and established as a public highway.

In witness whereof, we, Lemuel H. Arnold, James F. Simmons, and S. Fowler Gardiner, commissioners of said bank, duly authorized and appointed, have hereunto set our hands and seals for and in behalf of said bank, on the 20th day of July, A. D. one thousand eight hundred and thirty-three.

LEMUEL H. ARNOLD, [L. S.]
JAMES F. SIMMONS, [L. S.]
J. FOWLER GARDINER. [L. S.]

Signed, sealed, and delivered in presence of—
WM. R. STAPLES,
JESSE N. OLNEY,
Witnesses to the sigs. of L. H. Arnold, and J. F. Simmons.
BENJ. B. HOWLAND,
SARAH J. TOWNSEND,
Witnesses to the sig. of S. Fowler Gardner.

PROVIDENCE, *sc.*

PROVIDENCE, *March 13th*, 1834.

Then Lemuel H. Arnold and James F. Simmons in their said ca-

pacity as commissioners, acknowledged the aforegoing to be their and each of their free act and deed. Before me,

W. R. STAPLES, *Justice peace.*

NEWPORT, *sc.*

NEWPORT, *March 25th*, 1834.

Then personally appeared the above named S. Fowler Gardiner, and acknowledged the aforegoing instrument in writing, by him signed and sealed, to be his voluntary act and deed in his said capacity.

Before me, BENJ. B. HOWLAND, *Justice of peace.*

PROVIDENCE, *sc.*

CUMBERLAND, *March 28th*, 1834, *at* 11 *o'clock, a. m.*

Received the foregoing instrument and recorded it accordingly.

Attest, PARDON SAYLES, *Town clerk.*

TOWN CLERK'S OFFICE,
Cumberland, January 12th, 1850.

I certify the aforegoing to be a true copy from the records in this office. L. B. ARNOLD, *Town clerk.*

Deed—Phœnix bank to Crawford Allen.

Know all men by these presents, that the Phœnix Bank of Providence, late the Farmers and Mechanics' Bank, a corporation created by the legislature of the State of Rhode Island, and established in the city of Providence, in the county of Providence, and State of Rhode Island, for and in consideration of the sum of fifteen thousand dollars, to them paid by Crawford Allen, of said city of Providence, the receipt whereof is hereby acknowledged, have remised, released, and forever quit claimed, and by these presents do remise, release, and forever quit claim, unto him, the said Crawford Allen, his heirs and assigns, forever, all the right, title, interest, property, claim, and demand which they now have or of right ought to have, or claim, in and to the following real estate, to wit: All the land situate at Valley Falls, in the town of Smithfield, in said county of Providence, that lies easterly of the Valley Falls turnpike, with all the buildings and improvements thereon, together with one half of the water of the Blackstone river at said Valley Falls, saving and excepting the lots of land, with the buildings thereon, and water-power heretofore sold to Henry Marchant, as will appear by deeds to him and by his deeds of mortgage to said bank, on record or on file in said Smithfield. Also two other lots of land situate at Valley Falls, and in the town of Cumberland, in said county of Providence, with all the buildings and improvements thereon. The first of which said lots is bounded southerly by said Blackstone river, or as it is sometimes called Pawtucket river; westerly by said turnpike road, northerly

on a street as delineated on a plat of a part of the Valley Falls village, R. I., as surveyed by Richard S. Scott, and platted by Samuel B. Cushing; and easterly, by another street as delineated in said plat; which said last named street separates said last named lot from other land of the grantee, and is the same lot through which the canal is cut leading to said Allen's mill. The other lot is westerly of said turnpike road, and on which is a dwelling house known by the name of the Ballou house; said lot is bounded southerly by the said river, easterly by said turnpike road, northerly by land purchased of the grantee of William Harris, and extends back westerly from said turnpike road, so far as to range with the westerly line of the land conveyed to the grantee by said Harris; also one other lot of land situate at said Valley Falls in said town of Smithfield, with a stone dwelling-house and other improvements thereon, and is lot No. 59 (fifty-nine) on the west side of said turnpike road, as delineated on a plat of Valley Falls, as surveyed by Richard L. Scott, and platted by S. B. Cushing, in June, 1830, and also the right and privilege of raising the water of the dam in low states of the river, by placing flash boards upon the said dam not exceeding in height sixteen inches; and if in consequence of the placing of said flash boards upon said dam that portion of the grantors' other land situate in said Smithfield, called the Hall farm, shall be flowed, the said the Phœnix Bank of Providence, their successors and assigns, shall make no charge upon or have any claim upon the said Crawford Allen, his heirs or assigns, for or on account of any such flowage of the said land, called the Hall farm, or for flowage of any other of the grantors' lands in Smithfield or Cumberland. To have and to hold the same, with all the rights, privileges, and appurtenances thereof, or thereunto appertaining, to him, the said Crawford Allen, his heirs and assigns forever, but subject to all the claims of Timothy Dexter and Jeremiah Whipple, for flowage, and also subject to the payment of the proportional part of the claims of the Lonsdale Company and others, if any there are, for flowage of their lands. And we, the said the Phœnix Bank of Providence, for ourselves and for our successors and assigns, do covenant with the said Crawford Allen, his heirs and assigns, that we will warrant and defend the afore granted premises (but subject to the claims for flowage as aforesaid,) to him, the said Crawford Allen, his heirs and assigns forever, against the lawful claims and demands of all persons claiming by through or under us, the said the Phœnix Bank of Providence.

In testimony whereof we, the Phœnix Bank of Providence, have caused these presents to be signed by James F. Simons, our president, and agent for this purpose specially appointed, and our corporate seal to be hereunto affixed, this thirtieth day of May, in the year of our Lord one thousand eight hundred and thirty-six.

JAMES F. SIMONS, *Pres.* [L. S.]

Signed, sealed, and delivered in presence of—

A. BILLINGS,

JAMES REND RICHARDS.

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PROVIDENCE, *sc.*

CITY OF PROVIDENCE, *June 29th*, 1836.

Personally appeared James F. Simons, subscriber of the foregoing instrument, and acknowledged the same to be his voluntary act and deed in his said capacity.

Before me, A. BILLINGS, *Justice peace.*

The following is a copy of a vote of the stockholders of the Phœnix Bank of Providence, late Farmers and Mechanics' Bank, passed at their meeting held Dec. 22d, 1835.

Voted. "That the president of the bank, by the advice of the directors, have power to execute deeds for the sale of real estate belonging to the bank whenever they may deem it expedient."

True copy of record. Witness,

BENJA. WHITE, *Cashier.*

The following is a copy of a vote of the board of directors of the Phœnix Bank of Providence, late Farmers and Mechanics' Bank, passed at a meeting held June 21, 1836.

Voted. "That we advise our president, Mr. James F. Simons to execute a deed (dated the thirtieth day of May last) to Crawford Allen, esq., conveying such part of Valley Falls estate as described in said deed."

True copy. Witness,

BENJA. WHITE, *Cashier.*

Received to record July 7th, A. D. 1836, at 9 o'clock, a. m., and recorded July 14, 1836, by

THOMAS MANN, *Town clerk.*

TOWN CLERK'S OFFICE,
Smithfield, Sept. 30th, 1841.

The foregoing is a true copy from Smithfield registry of deeds, book No. 20, pages 120 and 121.

Witness, G. L. BARNES, *Town clerk.*

Deed.

Henry Marchant to Crawford Allen, to all persons whom these presents shall come: I, Henry Marchant, of North Providence, in the county of Providence, and State of Rhode Island, &c., send greeting:

Know ye that I, the said Henry Marchant, for and in consideration of the sum one dollar, to me in hand, before the ensealing hereof, well and truly paid by and in further consideration of a deed of even date herewith to me made by Crawford Allen, of Providence, in said county and State, the receipt whereof I do hereby acknowledge, and

am therewith fully satisfied, contented, and paid, and thereof, of every part and parcel thereof, do exonerate, acquit, and discharge him, the said Crawford Allen, his heirs, executors, and administrators, forever, by these presents; have given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents do freely, fully, and absolutely give, grant, bargain, sell, alien, enfeoff, convey, and confirm, unto him, the said Crawford Allen, his heirs and assigns, forever, a certain lot of land situate in the village of Valley Falls, in Smithfield, in said county and State, bounded and described as follows: Beginning on the Valley Falls turnpike road at the point where said road intersects the north side of the trench leading to the old stone mill; thence easterly with the north side of said trench to the east side of the old flume leading to the mill which was burned; thence northerly to the outside of the old foundation wall; thence easterly in a line with said old wall, until this line intersects at right angles a line drawn southerly from the most easterly corner of the dwelling-house standing on lot number forty-two (42) on a plat of said village certified by Richard S. Scott, August 11th, 1830; thence northerly along that line until it intersects a line drawn twenty feet south of the corner of the above named dwelling-house; thence westerly along that line until it intersects at right angles a line drawn twenty feet westward of the westerly corner of said house; thence northerly to a point forty feet from the Blackstone river at its ordinary state; thence westerly to said turnpike road to a point fifty feet south of the south abutment wall of the bridge; thence along said road to the place of beginning; together with the right of using the waters of said Blackstone river, to which said Allen is entitled from said old trench on said lot.

To have and to hold the said granted and bargained premises, with all the appurtenances, privileges, and commodities, to the same belonging or in anywise appertaining, to him, the said Crawford Allen, his heirs and assigns, forever, to his and their only proper use, benefit, and behoof, forever; and I, the said Henry Marchant, for myself, my heirs, executors, and administrators, do covenant, promise, and grant, to and with the said Crawford Allen, his heirs and assigns, that, at and before the ensealing hereof, I am the true, sole, and lawful owner of the above bargained premises, and am lawfully seized and possessed of the same, in my own proper right, as a good, perfect, and absolute estate of inheritance in fee simple; and have in myself good right, full power, and lawful authority, to grant, bargain, sell, convey, and confirm the said bargained premises in manner as aforesaid; and that the said Crawford Allen, his heirs, and assigns, shall and may, from time to time, and at all times forever hereafter, by force and virtue of these presents, lawfully, peaceably, and quietly have, hold, use, occupy, possess, and enjoy, the said demised and bargained premises, with the appurtenances free and clear, and freely and clearly acquitted, exonerated, and discharged of and from all and all manner of former or other gifts, grants, bargains, sales, leases, mortgages, wills, jointures, dowries, executions, and encumbrances, of what name or nature

soever, that might in any measure or degree obstruct or make void this present deed.

Furthermore I, the said Henry Marchant, for myself, my heirs, executors, and administrators, do covenant and engage the above demised premises to him, the said Crawford Allen, the said heirs and assigns, against the lawful claims or demands of any person or persons whatsoever, forever to warrant, secure, and defend by these presents. And I, Nancy Marchant, wife of the aforenamed Henry Marchant, in consideration of the sum aforesaid paid my said husband as aforesaid, do hereby remise, release, and forever quit claim to him, said Crawford Allen, his heirs and assigns, forever, all my right of dower and power of thirds in and to the foredescribed and granted premises.

In witness whereof we have hereto set our hands and seals, this twentieth day of December, A. D. 1836.

HENRY MARCHANT, [L. S.]
NANCY MARCHANT. [L. S.]

Signed, sealed, and delivered, in presence of—
GEO. C. NIGHTINGALE.
T. L. DUNNELL.

PROVIDENCE, *sc:*

In Cumberland, this twenty-ninth day of March, A. D. 1837, then personally appeared the above named Henry Marchant, subscriber to the foregoing instrument, and acknowledged the same to be his free act and deed.

Before me, BENJ. FESSENDEN,
Justice of the peace.

Received for record April 13th, A. D. 1837, at 12 o'clock, m., and recorded April 20th, 1837, by

THOMAS MAN, *Town clerk.*

Agreement of Crawford Allen with Henry Marchant.

Whereas Crawford Allen, of Providence, in the county of Providence, and State of Rhode Island, &c., and Henry Marchant, of North Providence, in said county and State, are the owners of certain lots of land, and a certain projected street, situate and lying in the village of Valley Falls, in Smithfield, in said county and State, which said projected street is in part adjoining the "old raceway," and is delineated on a plat of said Valley Falls, certified by Richard S. Scott, August 11th, 1830. And whereas the said Crawford Allen and Henry Marchant, for their mutual advantage, have agreed to shut up said projected street, and instead thereof to open a new street next to and adjoining the Blackstone river at said place. Now, therefore, this indenture witnesseth, that the said Crawford Allen, in consideration of

the premises, doth hereby remise, release, and forever quit claim to said Henry Marchant, his heirs and assigns forever, all his, said Crawford's, right, title, interest, and property in and to that part of said projected street, (which is now agreed to be shut up,) which lies opposite to and adjoining land of said Marchant.

And the said Crawford doth hereby, for the consideration aforesaid, also remise, release, and forever quit claim and convey, unto said Marchant, his heirs and assigns forever, the right of way over a strip of land forty feet in width next to and adjoining the south side of the Blackstone river, in said village of Valley Falls, being the northernmost end of certain lots of said Allen belonging there situated, to be used, occupied, and improved by the owners of the land on said plat, delineated on the south side of the Valley Falls turnpike road, at their will and pleasure at all times hereafter, and forever to be kept open and unincumbered.

And the said Henry Marchant, in consideration of the premises, doth hereby remise, release, and forever quit claim, to said Crawford Allen, his heirs and assigns forever, all his, said Henry's, right, title, interest, and property in and to that part of said projected street hereby agreed to be shut up, which lies opposite to and adjoining land of said Allen.

And the said Marchant doth hereby, for the consideration aforesaid, also remise, release, and forever quit claim and convey, unto the said Allen, his heirs and assigns forever, the right of way over a strip of land forty feet in width, next to and adjoining the south side of the Blackstone river, in said village of Valley Falls, being the northernmost ends of certain lots of said Marchant belonging, there situate, to be used, occupied, and improved by the owners of the land on said plat delineated, on the side of the Valley Falls turnpike road, at their will and pleasure, at all times hereafter, and forever to be kept open and unencumbered.

In witness whereof the said Crawford Allen and Henry Marchant have hereto set their hands and seals, this twentieth day of December, A. D. 1836.

CRAWFORD ALLEN, [L. S.]
HENRY MARCHANT. [L. S.]

Signed, sealed, and delivered in presence of—
GEO. C. NIGHTINGALE,
T. L. DUNNEL.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
County of Providence, sc.

In the city of Providence, this 13th day of April, A. D. 1837, then the above named Crawford Allen personally appeared and acknowledged the preceding instrument to be his free act and deed, before me,

NATHANIEL SEARLE,
Public notary.

Received for record April 13th, 1837, at 12 o'clock, m., and recorded May 3d, 1837, by THOMAS MANN,
Town clerk.

Deed—Phœnix Bank to Philip Allen et al.

Know all men by these presents, that, whereas the Phœnix Bank of Providence, in the county of Providence, in the State of Rhode Island, a corporation created by the legislature of said State, did, on the 30th day of May, A. D. 1836, sell and convey to Crawford Allen, of said Providence, certain lots of land, situate at Valley Falls, in the towns of Cumberland and Smithfield, together with certain water power, viz., one-half of the water of the Blackstone river; and whereas doubts have arisen whether the deed of said bank to said Crawford, of the date aforesaid, did convey an entire half part of said river, or whether therefrom should be deducted certain water power previously sold to Henry Marchant by said Phœnix Bank; and whereas it was not the intention that any such deduction should be made, but that a full half part should be conveyed to said Crawford by said deed; and whereas the said Crawford did, by his deed of assignment and trust, dated the fifteenth day of May, A. D. 1837, convey the aforesaid lot of land and water power, with all his other property and estate, to Philip Allen, Isaac Brown, and Zachariah Allen, in trust, according to the provisions of said deed.

Now, therefore, the said Phœnix Bank, desirous of carrying into full effect the bargain and sale made to said Crawford, does, for and in consideration of one dollar, in hand paid to said bank by the said Philip, Isaac, and Zachariah, remise, release, and forever quit claim, to them, their executors, administrators, and assigns, all the right, title, and interest of said bank in and to the said half part of said Blackstone river, intended to have been conveyed by said deed.

In testimony whereof the said bank has caused these presents to be signed by James F. Simmons, president, and the corporate seal of said bank to be hereto affixed, this fifteenth day of May, A. D. one thousand eight hundred and thirty-nine.

JAMES F. SIMMONS, [L. S.]
President of the Phœnix Bank of Providence.

Signed, sealed, and delivered in presence of -
THOS. M. BURGESS.

PROVIDENCE COUNTY, *sc.*

In Providence, this fifteenth day of May, A. D., 1839, then James F. Simmons personally came and appeared before me, and, in his capacity as president of the Phœnix Bank, acknowledged the within instrument, by him signed as president of the Phœnix Bank of Providence, to be the free and voluntary act and deed of the Phenix Bank of Providence.

HENRY MARTON,
Notary public.

The following is a copy of a vote of the stockholders of the Phœnix Bank of Providence (late Farmers and Mechanics' Bank) passed at their meeting held December 22d, 1835:

"Voted, that the president of the bank, by the advice of the directors, have power to execute deeds for the sale of real estate belonging to the bank whenever they may deem it expedient."

True copy of record.

Witness— BENJA. WHITE, *Cashier.*

The following is a copy of a vote of the board of directors of the Phœnix Bank of Providence passed at a meeting held May 15, 1839, at 11 o'clock a. m.:

Voted, that we advise J. F. Simmons, our president, to sign such a deed to the assignees of Crawford Allen as will confirm the sale made, or intended to be made, to said C. Allen by deed of May 30, 1836."

True copy of record.

Witness— BENJA. WHITE, *Cashier.*

Received for record, January, 3, 1840, at 4¼ o'clock, p. m., and is recorded in Cumberland registry of deeds, book No. 17, page 35, by

PARDON SALES, *Town clerk.*

Received for record, February 1, 1840, at 15 minutes past 4 o'clock p. m., and is recorded in Smithfield registry of deeds, book No. 21, and page 183, February 7, 1840.

THOMAS MANN, *Town clerk.*

Deed—Philip Allen et al. to Oliver Chace.

Know all men by these presents, that we, Philip Allen, Isaac Brown, and Zachariah Allen, all of the city of Providence, in the State of Rhode Island, assignees of the estate and property, real and personal, of Crawford Allen, of said Providence, merchant, for the uses and purposes set forth in his deed of assignment and trust, bearing date the fifteenth day of May, A. D. 1837, which deed is duly recorded in the records of the city of Providence, for the purpose of fulfilling the provisions of said deed, and carrying the same into execution, have, for and in consideration of the sum of sixty-five thousand [and] fifty dollars to us in hand paid by Oliver Chace, of Tiverton, in the county of Newport, in said State, (the receipt whereof we hereby acknowledge,) bargained and sold, do, by these presents, grant, bargain, sell, convey, and set over, to him, the said Chace, his heirs and assigns forever, all those several parcels of land situate at Valley Falls, in the towns of Cumberland and Smithfield, in the county of Providence, in the State aforesaid, which belonged to the said Crawford Allen on said fifteenth day of May, A. D. 1827, and were known as his Valley Falls mills estate, together with three-fourths of the water of the Blackstone river, and all the rights and privileges belonging thereto, with all the factory, picker house, dwelling houses, trenches, water ways, and other improvements

upon said land or to the same belonging; which said parcels of land are more particularly enumerated and described as follows, viz: One certain parcel of land, with the factory, picker house, dwelling houses, and other improvements thereon, situate in Cumberland, and bounded as follows, viz: Beginning at the southeasterly corner of said lot, on the Blackstone river, where it bounds on the southwesterly corner of Abbott Run estate; thence bounded on said estate north 5° east, about six hundred fifty feet, until it intersects the line known as the north line of the Hatch purchase; thence south 77½° west, about four hundred seventy-five feet, to land of Jeremiah Whipple; thence south 10° west, about sixty-five feet; thence north 87° west, about sixty-five feet to a highway; thence south 3½° west, bounding on said highway about three hundred feet, to a point fifty feet north of the northwest corner of the stone factory upon said lot; thence south 81° west, about one hundred fifty feet; thence northerly, parallel with the Valley Falls turnpike, one hundred feet; thence westerly, at right angles with said turnpike, one hundred feet, to said turnpike; thence by said turnpike to the river, which river is the southerly bound of this lot; excepting, however, from the land included in these limits, all roads or highways that may have been lawfully established; also one other parcel of land in said Cumberland, consisting of three house lots, bounded as follows: Beginning at the northwest corner of the Valley Falls turnpike bridge; thence northerly, on said turnpike, about three hundred sixty-seven feet; thence westerly, at right angles with said turnpike, one hundred twenty-two feet; thence turning a right angle and running to the Blackstone river, which river is the southerly boundary of this lot, together with the dwelling-houses and improvements thereon; also one other parcel of land, with the dwelling-house thereon, situate in said Cumberland, bounded as follows, viz: Beginning at the northwest corner of said land; thence southerly, bounding on the aforesaid turnpike, about two hundred twenty feet, to land formerly belonging to A. Bates; thence north 79° east, about two hundred forty feet; thence south 1½° west fifty-three feet; thence north 79° east to a highway; thence bounding on said highway northerly, about three hundred feet, to land of John, George, and Stephen Slocum; thence in a straight line to the first named bound; also one other parcel of land situate in said Cumberland, containing by estimation seven acres, with a dwelling house thereon, which land is bounded northerly by Lovett Haven's; easterly by Abbott run pond; southeasterly by land of Phœnix Bank, and otherwise by a highway; also thirty-four lots of ground in said Smithfield, which lots are numbered upon a plat of Valley Falls, made by Samuel B. Cushing and Richard S. Scott, as mill lots numbers three, four, five, six, and lots numbers twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-two, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, with the dwelling house thereon, and one lot which is part of lot

number forty-two, and part of mill lot number one, upon said plat, and bounded as follows, viz: beginning on the Valley Falls turnpike road, at the point where said road intersects the north side of the trench leading to the old stone mill; thence easterly with the north side of said trench to the east side of the old flume leading to the mill that was burned; thence northerly to the outside of the old foundation wall; thence easterly in a line with said old wall until this line intersects at right angles a line drawn southerly from the most easterly corner of the dwelling-house standing on lot number forty-two; thence northerly along that line, until it intersects a line drawn twenty feet southward of the easterly corner of said house; thence northerly to a point forty feet from the Blackstone river at its ordinary state; thence westerly to said turnpike, at a point fifty feet south of the south abutment wall of the bridge; thence along said road to the place of beginning; said thirty-four lots being subject to the terms and conditions of an agreement between Henry Marchant and Crawford Allen as to the change in location of a street laid down upon said plat, which agreement is recorded at the two hundred twelfth page of book twenty of the records of the town of Smithfield; also one other lot of land, with a dwelling-house thereon, in said Smithfield, formerly the property of Thomas Bates, bounding easterly on said turnpike, on which it measures sixty feet, and being of the same width, and one hundred feet in depth.

It being intended hereby to convey to the said Oliver Chace, all the right, title, and interest that the said Crawford Allen had on said fifteenth day of May, A. D. 1837, in and to any lands situate at or near to Valley Falls in said towns of Cumberland and Smithfield, with the factory, picker-house, water-wheels, water-power, main-gearing, dam, water-ways, dwelling-houses, and other improvements thereon or thereto belonging, whether the same be herein described or not; excepting, however, all the interest of the said Crawford in the said Abbott Run estate, with the privileges and appurtenances thereof; the estates hereby conveyed having been conveyed to the said Crawford by William and Daniel G. Harris. The Farmers and Mechanics' Bank, the Phœnix Bank of Providence, and Henry Marchant, to whose deeds duly recorded reference is hereby made. It being understood that the estate hereby named, as formerly the property of Thomas Bates, is subject to the dower of Lydia Bates; that the estates conveyed by the said William and Daniel G. Harris are subject to the contingent right of dower of the wife of said William; and that the water-power hereby conveyed, viz., the three-fourths of the Blackstone river, is subject to the payment of certain claims for flowage, and also to certain rights of the Abbott Run Company; which said rights are more fully described and set forth in certain deeds from the said Crawford Allen, and from these grantors to Milton S. Morse and Benjamin Fessenden, which are duly recorded in the records of the town of Cumberland.

To have and to hold the said bargained and conveyed premises unto the said Oliver Chace, his heirs and assigns, forever, with all the previ-

leges and appurtenances to the same belonging, in the same full and ample manner as we hold the same by virtue of the deed of assignment and trust aforesaid.

And we, the said Philip Allen, Isaac Brown, and Zachariah Allen, for ourselves, our respective heirs, executors, and administrators, do covenant with the said Oliver Chace, his heirs and assigns, that we will warrant and defend the said premises against the claims and demands of all persons claiming the same, by, through, or under us.

In witness whereof we have hereunto set our hands and seals, this twentieth day of May, A. D. one thousand eight hundred and thirty-nine.

PHILIP ALLEN, [L. S.]
ISAAC BROWN, [L. S.]
ZACHARIAH ALLEN. [L. S.]

Signed, sealed, and delivered in presence of—
THOMAS M. BURGESS,
Witness of signature of Isaac Brown.
NATHANIEL SEARLE,
Witness of all the signatures.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
County of Providence, sc.

In the county of Providence, on this fourth day of June, A. D. 1839, then personally came the within named Philip Allen, Isaac Brown, and Zachariah Allen, before me, and acknowledged the within instrument, by them signed, to be their free act and deed.

NATHANIEL SEARLE,
Notary public.

Received for record January 23, 1840, at 4¼ o'clock, p. m., and is recorded in the Cumberland registry of deeds, book No. 17, pages 35, 36, and 37, by

PARDON SAYLES, *Town clerk.*

Received for record February 19, 1840, at 30 minutes past 4 o'clock, p. m., and is recorded in Smithfield registry of deeds, book No. 21, and page 184.

THOS. MANN, *Town clerk.*

FEBRUARY, 1840.

Warrantee deed from Crawford Allen to Benjamin Fessenden.

To all persons to whom these presents shall concern.

I, Crawford Allen, of Providence, in the county of Providence, in the State of Rhode Island and Providence Plantations, merchant, send greeting:

Know ye, that I, the said Crawford Allen, for and in consideration of the sum of ten thousand dollars, to me in hand before the ensealing hereof well and truly paid by Benjamin Fessenden, of Cumberland, in the county and State aforesaid, manufacturer, the recept whereof I do hereby acknowledge, and am therewith fully satisfied, contented, and paid, and thereof, and every part and parcel thereof, do exonerate, acquit, and discharge him, the said Benjamin Fessenden, his heirs, executors, and administrators, forever, by these presents; have given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents do freely and absolutely give, grant, bargain, sell, alien, enfeoff, convey, and confirm, unto him, the said Benjamin Fessenden, his heirs and assigns, forever, one undivided quarter part of a certain tract or parcel of land situated in said Cumberland, with the mills, houses, buildings, dams, water-power, and privileges to the same belonging, called the Abbott Run estate, butted and bounded as follows, to wit: Beginning at an oak tree marked near the bank of the Blackstone river, and running north five degrees east, until the line intersects the north line of the Hatch purchase, where a stone is set in the earth for a bound, and the northwest corner of the premises hereby granted; thence turning and running easterly along the north line above named, and along the fence on the north line of the Abbot Run estate, until it comes to the river at a stone set in the earth; thence southeasterly to a stake and stones on the southerly side of the Attleborough road; thence westerly to the river at the abutment of the bridge; thence down the Abbot Run river to the Blackstone river; thence up the Blackstone river to the first mentioned bound, together with all the machinery, tools, and manufacturing instruments, agreeably to a schedule thereof hereunto annexed; the grantor hereby expressly reserving to himself and to his heirs and assigns, at all times the free liberty to enter upon and pass over the premises hereby granted; to use and keep in repair the raceway from the grantor's mills at the Valley Falls dam; and I do hereby further give and grant unto the said Benjamin Fessenden the right and privileges for him, his heirs and assigns, to make, maintain, and keep up a trench or flume from the said Valley Falls dam, through and across my other land, in such way and manner as will do me the least damage; which trench shall end in the said Abbott Run mill pond or flume, and to be constructed of such depth and breadth as to carry into the said Abbott Run pond or flume as much water as may be sufficient to enable the owner of the said Abbott Run mills to carry or run three thousand cotton spindles, one-half thereof throstle and the other half thereof mule spindles, with the necessary preparation and looms in the mills on the said estate, so that in case of any deficiency of water in the Abbott Run river to drive that number of spindles when the dam shall remain at its present height, then the owner of the said Abbott Run mills shall have the right and privilege of making up such deficiency of water, by drawing through the aforementioned trench a supply from the said Valley Falls pond; to have and to hold the said granted and bargained premises, with all the appurten-

ances, privileges, and commodities to the same belonging or in any wise appertaining, to him, the said Benjamin Fessenden, his heirs and assigns forever, to his and their only proper use, benefit, and behoof forever. And I, the said Crawford Allen, for myself, my heirs, executors, and administrators, do covenant, promise, and grant, to and with the said Benjamin Fessenden, his heirs and assigns, that at and before the ensealing hereof I am the true, sole, and lawful owner of the above bargained premises, and am lawfully seized and possessed of the same, in my own proper right, as a good, perfect, and absolute estate of inheritance, in fee simple; and have in me good right, full power, and lawful authority to grant, bargain, sell, convey, and confirm the said bargained premises, in manner as aforesaid. And that the said Benjamin Fessenden, his heirs and assigns, shall and may, from time to time, and at all times forever hereafter, by force and virtue of these presents, lawfully, peaceably, and quietly have, hold, use, occupy, possess, and enjoy the said demised and bargained premises, with the appurtenances, free and clear, and freely and clearly acquitted, exonerated, and discharged of and from all and all manner of former or other gifts, grants, bargains, sales, leases, mortgages, wills, entails, jointures, dowries, judgments, executions, and incumbrances, of what name or nature soever, that might in any measure or degree obstruct or make void this present deed.

Furthermore, I, the said Crawford Allen, my heirs, executors, and administrators, do covenant and engage the above demised premises to him, the said Benjamin Fessenden, his heirs and assigns, against the lawful claims or demands of any person or persons whatsoever, forever to warrant, secure, and defend by these presents.

In witness whereof I have hereunto set my hand and seal, this twenty-seventh day of July, in the year of our Lord eighteen hundred and thirty-three.

CRAWFORD ALLEN. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM R. STAPLES,
LEVI C. EATON.

PROVIDENCE, *sct:*

PROVIDENCE, *August* 14, 1833.

Then Crawford Allen acknowledged the foregoing to be his free act and deed. Before me,

W. R. STAPLES,
Justice peace.

A similar deed conveys one-half of said premises to Milton S. Morse.

Lease—O. Chase to Henry Marchant.

This indenture, made and executed this fifth day of the eighth month, in the year of our Lord one thousand eight hundred and forty-six, be-

tween Oliver Chace, of Tiverton, in the county of Newport, and State of Rhode Island, &c., of the one part, and Henry Marchant, of the city and county of Providence, in said State of Rhode Island, for the other part, witnesseth:

That said Oliver Chace, the party of the first part, in consideration of the payment of the sum of one thousand dollars, made to him by said Henry Marchant, the party of the second part, in full for the use of the water power hereinafter mentioned, for the term of twelve months, ending on the twentieth day of the present month, and in further consideration of the rent bereinafter agreed to be paid by said Henry Marchant, hereby lets and leases to said Henry Marchant, his heirs and assigns, all the water power which he, said Chace, owns at Falley Falls, in said State of Rhode Island, &c., excepting thereout so much as may be required by him, said Chace, or those holding under him, for properly carrying on their business and keeping in operation machinery in the buildings owned by him, said Chace, and which buildings he now operates in, by means of water power, in said village of Valley Falls

The quantity of water leased, and the quantity reserved, to be determined in the following manner, to wit: The gate-way recently put in by the master in chancery, appointed by the court for that purpose, on the lot of said Chace, in Smithfield, is to be closed during the continuance of this lease, and one of the same size and level is, during said time, to be opened in trench leading to the mills of said Chace, on the Cumberland side of the river, and also one other like gate-way, of the same size and level, is to be opened into the trench leading to the mills of said Marchant, and to be kept open during the continuance of this lease; but in case, at any time during said term, the water shall be so low as that the proper operation of the mills of said Chace, on the Cumberland side, shall require a larger portion of the water than will flow with said gateways in the trenches, as above provided, he, the said Chace, or those holding under him, may close up so much of said gateway in the trench leading to said Marchant's mill, as may be necessary to cause a sufficient quantity of water to pass to the mills of said Chace, if his portion of the water power of said river is sufficient therefor.

And it is further provided that, if said Chace, or those holding under him, shall make erections on the Smithfield side of the river before the termination of this lease, requiring the use of water power, he or they may draw water from the trench on the Smithfield side, for the use of the works that may be established, at such times, and in such quantities only, as can be done without impeding the operations of the works of said Marchant.

The true intent and meaning of this contract being that said Chace shall let to said Marchant, for the term of two years from the twentieth day of the eighth month, A. D. 1845, so much of his water power as will, in addition to his own quarter part of said water, properly operate the works of said Marchant, if the portion of said Chace, after reserv-

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ing a full supply for his mills on the Cumberland side, is adequate thereto; and the surplus, if there be any, after supplying the works of said Chace in Cumberland, and the works of said Marchant, may be used by said Chace on the Smithfield side.

And in consideration of the preceding lease the said Marchant covenants that he will pay to said Chace, as rent therefor, the *the* sum of one thousand dollars per annum, as follows, viz: one thousand dollars to be paid on the twentieth day of the eighth month, A. D. 1846, five hundred dollars in six months from the twentieth day of the present month, and five hundred dollars on the twentieth day of the eighth month, A. D. 1847; for which two last mentioned sums he, said Marchant, has given his notes, payable as above mentioned—the one in six, the other in twelve months. And he, said Marchant, further covenants that said Chace, or those holding under him, *or those holding under him*, may at any time close the said gateway in the trench leading to the mills of the said Marchant, whenever it becomes necessary under the provisions of this agreement.

And it is further mutually agreed that this lease, with all its provisions, may be extended for the term of six months from said twentieth day of the eighth month, A. D. 1847, provided that said Marchant shall give written notice of his wish to have the same so extended on or before the twentieth day of the second month, A. D. 1847, next following the date hereof; and shall at the time of such notice give his note to said Chace for the sum of five hundred dollars, payable in twelve months from said last mentioned date.

And it is further agreed that all necessary expenses of maintaining the bulk-head on the Smithfield side, and of conveying the water from the pond as far as the gateway established at the mill of said Marchant, shall be paid equally by the parties during the continuance of this lease.

In witness whereof the parties hereto have hereunto interchangeably set their hands and seals this fifth day of the eighth month, A. D. 1846.

OLIVER CHACE, [L. S.]
HENRY MARCHANT. [L. S.]

In presence of—
WILLIAM P. SHIFFIELD, to O. C.,
ISAAC BUTTS, witness to the signature of Henry Marchant.

PROVIDENCE, *August 20th*, 1847.

It is agreed by the parties to the within lease to extend the same from one year from this date, to wit, until the 20th day of August, 1848.

In witness whereof we have hereunto fixed our hands and seals at the date above written.

HENRY MARCHANT, [L. S.]
OLIVER CHACE. [L. S.]

ISAAC BUTTS,
HARVEY CHACE.

PROVIDENCE, *2d mo.*, *20th*, 1849.

It is agreed by the parties to the within lease to extend the same for two years from this date, to wit, until the twentieth day of the 2d month, in the year eighteen hundred and fifty-one.

In witness whereof we have hereunto fixed our hands and seals at the date above written.

HENRY MARCHANT, [L. S.]
OLIVER CHACE. [L. S.]

Agreement concerning Oliver Chace's title.

It is agreed that all the title which the said Harris acquired by the deed from A. & J. Wilkinson, dated September 13th, 1813, was conveyed to Crawford Allen by deed, dated the 12th day of July, 1833; and, by an assignment of a mortgage made by William Harris upon his interest in the same property, to N. Searle and Henry Marchant, assignees, from Henry Marchant, surviving assignee, to said Crawford Allen, on or about the same date.

Also, that said Crawford Allen, on the fifteenth day of May, 1837, by deed of that date assigned all his property for the benefit of his creditors to Philip Allen, Isaac Brown, and Zachariah Allen, including all lands and water power at Valley Falls, and that said deed was properly executed.

Also that all the deeds of which copies are filed in the case are properly executed.

And at the June term, A. D. 1850, the following motion was filed:

Circuit court of the United States, Rhode Island district, *sc.* June term, 1850.

The complainant in said cause moves the court, that the final decree for partition of the water of the Blackstone river, at the place described in said bill and answer, be so framed, that the apertures, gateways, and gates, which may be established for the use of the water power of said complainant may be removed from the place in which the present apertures, gateways, and gates, are now located, to other lots belonging to the complainant, or to different parts of the same lots, or to different sides of the river, without injury to the rights of the defendants in said case. T. A. JENCKES, *for complainant.*

And at said June term, A. D. 1850, the master asked for further instructions from the court, as follows:

To the judges of the honorable circuit court of the United States, for the Rhode Island district, sitting in equity, in the case of

OLIVER CHASE
vs.
HENRY MARCHANT et al.

The undersigned, Samuel B. Cushing, master in chancery in the above entitled cause, respectfully submits to the court, that, in the summer of the year 1846, he caused an aperture to be constructed on the Smithfield side of the river, at Valley Falls, of suitable capacity to discharge one quarter part of the water of the Blackstone river, for the use of the said Oliver Chace. The said aperture was placed in the side of trench leading to the old mill owned by said Henry Marchant, and delivered the water upon and through the Allen lot, so called, owned by said Chace, and thence into the old sluiceway which receives the water from the wheels of said Marchant's mills.

The said Oliver Chace had not at that time, nor has he now, any mill or machinery on the Smithfield side of the river, to be operated by the water passing through said aperture; and whenever said aperture was opened, the water passing through it was allowed to run to waste. The said Oliver Chace and the said Henry Marchant subsequently entered into an agreement, by virtue of which said aperture was closed; which said agreement is in force at the present time, and will expire on the 20th day of February, 1851.

The said Marchant now denies the right of said Chace to cause the water to run to waste through said aperture; and upon this point the undersigned would respectfully solicit the instructions of the court, that he may be governed by them, after the agreement aforesaid shall have expired.

All which is respectfully submitted.

SAMUEL B. CUSHING.

NEWPORT, *July* 24, 1850.

And at the November term, A. D. 1850, the respondent, Henry Marchant, filed the following motion:

Motion.

United States circuit court, Rhode Island district, Nov. term, A. D. 1850.

OLIVER CHACE
vs.
HENRY MARCHANT et als.

Motion for further instructions to the master appointed to make partition.

The respondent, Henry Marchant, represents to the honorable court, that, since the last continuance of said cause, the said Oliver Chace hath commenced, and nearly completed, a trench flume and rolling-way, the same being partly in the lot of land conveyed to said Henry Marchant to said Crawford Allen, and by said Crawford to said Chace, for the terms of which, and the rights and title of said Chace therein, reference is made to the deed of said Marchant to said Crawford, under date of December twentieth, A. D. eighteen hundred and thirty-six,

on file in this cause, and partly on the turnpike adjoining which is the property of said Marchant.

That said trench flume and rolling way are so constructed as to take the water from the trench of said Marchant, and conduct the same to the wheel of a grist mill, now in process of erection by said Chace on said lot, and also to take water in large quantities, and all the waste water of one quarter or more of said Blackstone river, and discharge the same into the raceway of said Marchant, and thus greatly obstruct the said raceway and pile backwater thereon upon the wheels of said Marchant's mills, and greatly injure the running of said mills.

This respondent further saith, that said Chace hath no right to discharge any water from his said lot into said raceway, beyond what he uses on said lot.

And this respondent, by leave of the court, reserving all questions as to the rights of said Chace to build his flumes and trench upon said turnpike, and his rights to discharge any water from said lot into said raceway, your respondent claiming that the same should be discharged into the river; and also as to the quantity of water, if any, which said Chace now has a right to use on said lot,

Now moves the court that the master be instructed, and this court by their decrees provide, that said Chace shall not discharge any waste water, or water except that which is used by him in turning wheels and running machinery on said lot into said raceway, but the same shall be discharged over the dam, or in some way not to obstruct and needlessly injure the raceway this respondents, and his rights of property therein.

And this respondent respectfully asks that this court consider this motion in conjunction with the application of the master for instructions now pending in this cause, the same being intended to present to the court the facts relating to the subject of said application, which have transpired since the filing thereof.

HENRY MARCHANT,
By TILLINGHAST & BRADLEY,
His Solicitors.

Whereupon, and upon a hearing of the parties, the following decree was entered at the November term, A. D. 1850:

Circuit court, United States, November term, A. D. 1850.

RHODE ISLAND DISTRICT, *sc:*

OLIVER CHACE
vs.
HENRY MARCHANT et als. } In equity.

On motion and hearing of the parties in reference to further instructions to be given to Samuel B. Cushing, the master in said cause, it is further ordered by the court, and the said master is hereby instructed

to ascertain and report to this court, on or before the first of January next (1851) whether the said Chace can use all the water of said river to which he is entitled at the Valley Falls pond, upon the Cumberland side, or upon the Smithfield side, at his election, or in any other manner at his election, in reference to the two sides of the river, except in the manner designated by the interlocutory decree of this court, on the fourth day of the June term, A. D. 1845, without injury to the said Marchant; and if the said Chace can use said water otherwise than is designated in said decree, without injury to the said Marchant, that the said master ascertain and report on or before the said first day of January, in what way and manner it can be done.

And the said master is hereby further instructed to examine, ascertain and report, whether the present raceway is large enough for the use of said Marchant, and also for the use of said Chace (after the 20th of February, A. D. 1851) to use one quarter of the water of said Blackstone river on the Smithfield side, if the said trench be not used also to carry off waste water; and if the said raceway is not large enough for the use of the said Marchant and the said Chace as aforesaid, then the said master is hereby instructed to ascertain and report what would be the expense of a new raceway for the use of said Chace, as a mere raceway, and how much more for a raceway to carry off waste water also.

And it is further ordered, that the said master examine and report, at the time aforesaid, whether the new trench dug by said Chace, does or does not go nearer said Marchant's mills than the contract or agreement between the said parties specifies; and if it does, whether in so doing, or otherwise, it injures or endangers the said Marchant's mills; and whether said trench is so dug, and where, as to injure or peril the public and not the said Marchant, in particular; and also how much longer or deeper the said trench is than will be necessary for the use of said Chace, of only one-quarter of the water of said river, on the Smithfield side.

Circuit court, R. I. district, November term, 1850, 10th day.

Entered as the order of the court as the decree thereof.

JOHN T. PITMAN, *Clerk.*

And under the foregoing decree the master, on the 1st day of January, A. D. 1851, filed in the clerk's office the following report:

To the honorable the circuit court of the United States, for the Rhode Island district, sitting in equity, in the case

OLIVER CHACE
vs.
HENRY MARCHANT et als.

The undersigned, Samuel B. Cushing, master in chancery, in the above entitled cause, respectfully reports:

That, in obedience to the interlocutory decree of the court entered

of record in the above entitled cause on the tenth day of the November term, A. D. 1850, I have inquired into and examined touching the matters and things required therein; and in relation to the question "Whether the said Chace can use all the water of said river to which he is entitled at the Valley Falls pond, upon the Cumberland side, or upon the Smithfield side, at his election, or in any other manner at his election, in reference to the two sides of the river, except in the manner designated in the interlocutory decree of this court on the fourth day of the June term, A. D. 1845, without injury to the said Marchant:"

I find and report, that the said Chace cannot use upon the Cumberland side of the river all the water to which he is entitled at the Valley Falls pond, because the land suitable for mill sites on that side of the river is not of sufficient extent to accommodate the buildings and works that would be required for this purpose. The available ground on that side of the river is nearly or quite all occupied by the mills and works already erected; and the capacity of said mills and works is inadequate for the use of all the water to which said Chace is entitled at the Valley Falls pond. The said Chace now has in operation on the Cumberland side of the river (as appears by the deposition of George Smith) 10,876 spindles; which, together with the looms and other machinery, and the water taken by the Abbott Run company, require the use of about one-half of the ordinary flow of the river. In times of drought one-half of the water running in the river will not be sufficient to operate all the machinery the said Chace now has in operation on the Cumberland side, and supply also the Abbott run; but in wet seasons it will be more than sufficient. By the term "ordinary flow," I mean to designate the quantity of water that usually, or ordinarily, runs in the river in the summer season, and not the average flow of the river the year round; the ordinary flow during the summer being all that can be relied on to drive machinery permanently without the aid of other power. The average flow, taking the year round, is very much greater than the ordinary flow, as defined above; it being, probably, at least double that quantity; but it is not customary nor desirable to erect mills requiring the use of the average flow, or any portion of it much exceeding the ordinary flow in summer, without providing steam power also, because such mills would have to stop a portion of their machinery too often, and for too long periods of time. A large portion of the average flow of the river, therefore, usually runs over the dam to waste. No part of this waste, or surplus water, can be used by said Chace on the Cumberland side of the river, because the available mill sites on that side are already occupied. And, furthermore, the raceway on that side of the river is not large enough to discharge freely more water than it now does, and cannot be enlarged without great expense, inasmuch as it is hemmed in by high land on one side, and by the river on the other. The said raceway also enters the river at a higher point than the raceway on the Smithfield side; so that the available head and fall, and consequently the power, of an equal quantity of water, is less on the Cumberland than on the Smithfield side. For this reason, it would not

be advantageous, were it practicable, for Chace to use, on the Cumberland side, all the water to which he is entitled at the Valley Falls pond; nor can the said Chace use, in a convenient and suitable manner, on the Smithfield side of the river, taking the year round, all the water to which he is entitled at Valley Falls pond, for want of room on his own land to erect the mills and other works that would be required for the use of so much water.

In respect to the use by said Chace of the water upon either side of the river at his election, in other proportions than those designated in the interlocutory decree aforesaid, namely, one-half on the Cumberland, and one-quarter on the Smithfield, side of the river, I find that without injury to said Marchant it can be done in the way and manner following, to wit: A mill or mills may be erected by the said Chace on his own land, eastward of the railroad, and between said Chace's new trench and the old raceway, taking the water from said new trench and discharging it into the said old raceway, eastward of the railroad; provided said old raceway shall be sufficiently enlarged eastward of the railroad to allow said water to run off freely. In this way and manner the said Chace, without injury to the said Marchant, can use, more or less, than one-quarter part of the river on the Smithfield side.

The said Chace can also use, more or less, than one-quarter part of the river on the Smithfield side, without injury to said Marchant, by erecting a mill or mills on his own land, eastward of the railroad, between said old raceway and the river, taking the water from the said new trench across the said old raceway, in a flume or flumes, and discharging it into the river above the mouth of said old raceway.

The said Chace can also use, more or less, than one-quarter part of the river on the Smithfield side, without injury to the said Marchant, by taking the water from said new trench and discharging it into the river below the mouth of the old raceway, through one or more new raceways, to be dug partly or wholly on land not owned by said Chace, provided the said Chace can obtain the said land for that purpose; and in this way the said Chace could use the water with rather more head and fall, and consequently to better advantage as to power, than in any other way. The said land, not owned by said Oliver Chace, is owned by Harvey Chace.

The said Oliver Chace can also, without injury to the said Marchant, use a portion of his water on the "Allen lot," so called, discharging it into the river through the old raceway; provided said old raceway shall be sufficiently enlarged, through its whole extent, to allow the water turned into it by said Chace to run off without causing back water on the said Marchant's wheels; or provided a new raceway be dug on the said Allen lot, and across the strip of land laid out for a street, intervening between said Allen lot and the river, so as to discharge the water used on said Allen lot into the river, opposite said lot, without using the old raceway.

But, in no way can the water be used on the Allen lot so advantageously as it may be used by the modes before described, inasmuch as it

would be used on said lot with less head and fall than the same water could be used from the new trench eastward of the railroad. If the water be used at all on the Allen lot, it can be used with more head and fall by the present raceway than by a new raceway into the river opposite said lot.

The question next to be determined is, "whether the present raceway is large enough for the use of the said Marchant, and also for the use of the said Chace, (after the 20th of February, 1851,) to use one-quarter part of the water of said Blackstone river, on the Smithfield side, if the said trench be not used also to carry off waste water."

And I find that the said raceway is not used at the present time by the said Chace, but is used solely by the said Marchant, the said Chace not now using any water on the Smithfield side of the river. The said Marchant uses said raceway to carry off the water which operates his mills; all of which mills are located on said raceway, and empty their water into it; and the said raceway is not large enough to discharge, in a proper manner, the water required for said Marchant's mills. The number of spindles in said mills appears, by the deposition of Hiram Wilmarth, to be seventeen thousand nine hundred, which require the use of more than one-half of the ordinary flow of the river. The said Marchant owns only one-quarter part of the river, which, being insufficient to operate all his machinery the year round, he has erected a steam engine, to use, in aid of his water power, at such times as there is not sufficient water in his proportion of the river to operate his said mills. The quantity of water turned into said raceway by said Marchant will vary, therefore, in different seasons, as the quantity of water running in the river varies; and will fluctuate from one quarter part of the lowest stages of the river up to more than double that quantity, or enough to operate the whole of said Marchant's machinery. The said raceway, although it does receive and carry off all the water required to operate said machinery, does not do so in an effectual or suitable manner; there being a loss of about three feet of fall in said raceway, in consequence of its inadequate dimensions; and there is from the same cause, usually, more or less backwater on the wheels of said Marchant's mill. The present raceway, therefore, is not large enough for the use of the said Marchant alone to discharge all the water required for the use of the mills; the quantity so required being rather more than one-half of the ordinary flow, and equal, probably, to about one-quarter of the average flow of the river. This water is all discharged into the raceway above, or westward of the railroad, where the capacity of the raceway is smaller than it is eastward of the railroad; for although wider, it is not dug so deep.

If the said Chace and the said Marchant each turn into said raceway one-quarter part of the ordinary flow of the river, the quantity used by both will be rather less than that now used by said Marchant alone to operate all his machinery; and to determine whether the said raceway is large enough for the use of both parties, each to use only one-quarter of the ordinary flow, regard must be had to where, or into what part of the raceway the said Chace would empty his portion of the wa-

ter, whether westward or eastward of the railroad. If westward of the railroad, the raceway is not large enough to carry it off, without incommoding the said Marchant's present wheels; but if the said Chace turns the water into the raceway eastward of the railroad, the present raceway is large enough for the use of said Marchant, and also for the use of said Chace, to use each one-quarter part of the ordinary flow of the river, without interfering with or causing back-water on the wheels of said Marchant's present mills; a new raceway for the said Chace, to be used as a mere raceway, would not in this case be required, and a raceway to carry off waste water only would have to be provided.

The expense of such a raceway would depend upon how much waste water it would be required to carry off. Assuming that the said Marchant would continue to use all the water required to operate all his machinery, whenever, and at such times as one-quarter of the river would furnish that amount, and that the said Chace would also use an equal quantity, and designating by the term waste water all the water so used by said Chace and said Marchant, over and above the ordinary flow, a new raceway, somewhat larger than the present raceway, would be required to carry it off. Such a raceway cannot be constructed westward of the railroad, to be used advantageously by both parties in common, unless at an enormous expense, the amount of which it would be extremely difficult or impossible to ascertain.

It could not be constructed alongside of the present railway without removing the engine house owned by said Marchant, and taking down and rebuilding the railroad arch, which would not only be extremely expensive, but might endanger or interrupt the traffic on said railroad.

The present railway can be enlarged eastward of the railroad, or a new raceway dug on the northerly side of, and adjoining, the present raceway, sufficiently large to carry off one-quarter part of the ordinary flow of the river, to be used by said Chace, at an expense of about nineteen hundred and twenty-one dollars, exclusive of the cost of the land. The said new raceway would require to be fifteen feet wide, and three feet lower than Central Falls pond. The expense of a raceway to carry off waste water for the said Chace, to be constructed eastward of the railroad, and adjoining the above proposed new raceway, would cost about as much for the mere construction as the said new raceway, as it would be constructed of the same dimensions and through similar soil. The land through which said new raceway would pass is owned by said Chace.

The said Marchant and the said Chace can both discharge the waste water used by them into the river, above the mouth of the present raceway, and independent of said raceway, by constructing wheels to use said water, on land owned by each party respectively, between said raceway and the river, eastward and westward of the railroad, taking the water to supply said wheels across the present raceway, in flumes, and discharging it through short raceways directly into the river. This mode of using the water would not, however, be advantageous to either party, inasmuch as neither party could so use it without a loss of head

and fall; and power of the wheels, thus located, would require to be shafted across the present raceway to be applied to the mills. The greatest loss of head and fall would be at the mills located above the railroad, and would diminish as the mills were located nearer the mouth of the present raceway.

In all the foregoing observations and estimates respecting waste water, I have used the term in the sense which I conceive the court attaches to it in their interlocutory decree ordering this report, namely, to signify surplus water over and above the ordinary flow, notwithstanding said surplus water may not actually run to waste, but be applied to operate machinery; for otherwise there be will no necessity to provide raceways to carry it off, as it would naturally be discharged over the dam, if not used to operate machinery.

I further report that the new trench dug by said Chace is so dug and walled up, that the face of the north wall thereof coincides with the face of the north abutment wall of the bridge of the Providence and Worcester railroad, and extends thence, on a westerly course, in a direct line towards the southwest corner of the said Marchant's old stone mill, leaving the corner of the porch of said Marchant's new wooden mill seventeen feet and five inches northerly of said new trench, and the southwest corner of said Marchant's new weaving shop nine feet and nine inches northerly of said new trench. The range of the face of the wall of the north abutment of the railroad bridge, would, if extended, pass ten feet south of the southwest corner of said Marchant's old stone mill.

The said new trench is so dug as to undermine and interfere with the porch on the south end of said Marchant's old stone mill, and also to interrupt and prevent a free passage around the south end of said mill; and in so far as it does this it is an injury to said Marchant; but it does not, in its present condition, endanger either of said Marchant's mills, although it may, if extended in the same course, endanger the corner of said Marchant's old stone mill.

The said new trench is so dug as to encroach upon and interfere with the travelled way of the Valley Falls turnpike, leaving said travelled way, however, as wide or wider than the travelled way of the bridges on said turnpike. A suitable and sufficient fence has been lately erected around the excavation where it encroaches on the turnpike, which is, no doubt, an ample protection to persons passing along the highway, if exercising reasonable and ordinary care.

The said new trench is about twenty feet wider than would be necessary for the said Chace to use one-quarter of the ordinary flow of the river on the Smithfield side.

The said new trench is not, in my opinion, of sufficient capacity to conduct full half of the average flow of the river, in a suitable manner, but it would probably do so, as *well as* the trenches now used by said Chace and said Marchant would each conduct one-quarter of the average flow.

The said new trench is not completed to the pond; when so com-

pleted a portion of it will occupy, or is intended to occupy, the position now occupied by part of the trench leading to said Marchant's mills; and this portion of said new trench would be used by said Marchant as well as by said Chace, and would, therefore, require to be of larger capacity than it now is, to supply the present amount of water used by said Marchant, together with an equal amount to be used by said Chace.

The court will have perceived that, in the estimates for new raceways to be used by said Chace, I have confined said estimates to such raceways as may be constructed without crossing or touching land not owned by said Chace, excepting land appropriated for streets. The expense of new raceways for said Chace, to use the water on land owned by Harvey Chace, below the mouth of the present raceway, would be influenced by the particular sites that might be selected for the mills; that is to say, the mills might be so located as to require long or short raceways, as might be found most advantageous and economical, upon examination and comparison of the various sites, and the relative expense of constructing said raceways, and of extending the new trench.

All which is respectfully submitted.

SAMUEL B. CUSHING.

Providence, January 1, 1851.

And the case being continued to the present term, the following is entered:

Decree.

RHODE ISLAND DISTRICT, *ss:*

Circuit court of the United States, June term, 1851.

OLIVER CHASE
vs.
HENRY MARCHANT et al. } In equity.

This cause came on to be heard at the June term of this court, 1850, and to be further heard at the November term, 1850, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows:

That partition of the water power of the Blackstone river, at Valley Falls, be made between the parties to this suit, so as to give to each proprietor of said river his proportion of the water thereof, to wit, to the said Oliver Chace one quarter part of said river, to be used on the Smithfield side thereof; and to the said Henry Marchant one quarter part of said river, also to be used on the Smithfield side thereof; and to the said Oliver Chace and the said Milton S. Morse, Benjamin Fessenden, Crawford Allen, Sullivan Dorr, jr., and George C. Nightingale the remaining half of said river, to be used on the Cumberland side thereof according to their respective rights and interests therein.

And further, that said Chace and Marchant may, from time to time,

change the place on the same side of the river at which each may draw or use the water of said river, from the lot on which it is now drawn or used to another lot or to a different part of the same lot, as they may prefer, provided no other proprietor of any part of said river, party to this suit, shall be injured thereby; but shall not remove or change the place of the use of the same from one side of the river to the other.

It is further ordered, that all questions between the said Oliver Chace and the said Milton S. Morse, Benjamin Fessenden, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., be reserved for the further consideration of the court.

And it is further ordered, that the supplemental bill in said case be dismissed without prejudice, and with costs, for said Marchant.

June term, 16th day, (25th July,) 1851.

Entered as a decree of this court, per order thereof.

JOHN T. PITMAN, *Clerk.*

And at said June term, in open court, was filed the following

Petition for appeal.

RHODE ISLAND DISTRICT, *sct:*

Circuit court of the United States, June term, 1851.

In case—

OLIVER CHACE
vs.
HENRY MARCHANT et al. } In equity.

The complainant in said case prays an appeal from the decree entered in said case at the present term thereof.

By his solicitor:

T. A. JENCKES.

Upon which the following order was made:

JULY 29, 1851.

Allowed upon the filing of an appeal bond by the appellant, with sufficient surety, to the satisfaction of the district judge, in the sum of one thousand dollars, on or before the 15th of October next.

JOHN PITMAN,
District judge U. S., Rhode Island district.

And afterwards, in pursuance of the foregoing order, was filed in the clerk's office of said court, on the nineteenth of September, A. D. 1851, the following appeal bond:

Appeal bond.

Know all men by these presents, that we, Oliver Chace, of Fall

River, in the county of Bristol, and commonwealth of Massachusetts, as principal, and James Y. Smith, of Providence, Rhode Island, and Jonathan Chace, of Smithfield, in said State, as sureties, are held and firmly bound unto Henry Marchant, of Smithfield, manufacturer, in the county of Providence, in the Rhode Island district, in the sum of one thousand dollars, to be paid to the said Henry Marchant, his heirs, executors, or administrators; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Now, the condition of the above obligation is as follows: Whereas, at the June term of the circuit court of the United States, for the first circuit, begun and holden at Newport, within and for the Rhode Island district, on the sixteenth day of June, A. D. 1851, a decree was rendered and pronounced by said court in a cause in equity in said court pending, wherein the said Oliver Chace is complainant, and the said Henry Marchant and others are respondents; from which decree the said Oliver Chace has appealed to the Supreme Court of the United States, next to be holden at Washington, in the District of Columbia, on the first Monday of December, A. D. 1851.

Now, therefore, if the said Oliver Chace shall prosecute his said appeal before said Supreme Court of the United States with effect, or in default thereof shall well and truly pay all such costs and damages as shall be adjudged for him to pay by said Supreme Court, or by said circuit court by reason of said appeal, then the before written obligation shall be void and of no effect, otherwise it shall remain in full force and effect.

Sealed with our seals, and dated this seventeenth day of September, A. D. eighteen hundred and fifty-one.

OLIVER CHACE, [L. S.]
JAMES Y. SMITH, [L. S.]
JONATHAN CHACE. [L. S.]

Signed, sealed, and delivered, in presence of—

HENRY T. BECKWITH,
Witness to signature of Jonathan Chase.
BENJAMIN B. ADAMS,
Witness to signature of James Y. Smith.
ISAAC FISKE,
Witness the signature of Oliver Chase.

Which bond was duly approved in the words following:
"November 11, 1851. Approved:
"JOHN PITMAN,
"*District judge U. S., R. I. district.*"
And the citation thereupon issued.

UNITED STATES OF AMERICA,
Rhode Island district, sct:

Clerk's office, circuit court, at Providence, November 26, A. D. 1851.
I, John T. Pitman, clerk of the circuit court of the United States

within and for said district, do hereby certify, that the foregoing one hundred and forty-seven pages, numbered 3 to 149, both inclusive, contained a true transcript from the record; and the five plats hereto annexed are true copies of the plats of the cause in equity, Oliver Chace vs. Henry Marchant et al., duly examined and compared.

In testimony whereof I have hereunto set my hand and the seal of said circuit court, on the day and year above written.

JOHN T. PITMAN, *Clerk.*

RHODE ISLAND DISTICT, *sct:*

The President of the United States of America, to the marshal of said district or to his deputy, greeting:

You are hereby required to make known to Henry Marchant, of Smithfield, manufacturer, Benjamin Fessenden and Milton S. Morse, both of Cumberland, Crawford Allen, George C. Nightingale, and Sullivan Dorr, jr., all of the city of Providence, manufacturers and partners in business under the name and style of the Abbott Run Manufacturing Company, and Elizabeth B. Kennedy, of Cumberland, all in the county of Providence, in the Rhode Island district, and citizens of the State of Rhode Island, &c.; that in a certain cause in equity in the circuit court of the United States, within and for the Rhode Island district, wherein Oliver Chace, of Fall river, in the county of Bristol, and commonwealth of Massachusetts, manufacturer, and a citizen of the State of Massachusetts, is complainant, and the said Henry, Benjamin, Milton S., Crawford, George C., Sullivan, and Elizabeth B., are respondents. The said complainant has appealed from a decree of the said circuit court rendered in said cause, at the June term, A. D. 1851, holden at Newport, within and for the district of Rhode Island, on the sixteenth day of June, A. D. 1851, unto the Supreme Court of the United States next to be holden at Washington, within and for the said United States, on the first Monday of December next, which appeal has been duly allowed.

And that they, the said Henry, Benjamin, Milton S., Crawford, George C., Sullivan, and Elizabeth B., then and there be before the said Supreme Court, to hear the proceedings on the said appeal, if it shall seem expedient unto them, and further to do and receive what in the said Supreme Court shall be ordered, adjuged, and decreed in this behalf, and make due return of this citation, with your doings therein.

In witness whereof I have caused the seal of the said circuit court to be hereunto affixed, and have subscribed these present this [L. S.] eleventh day of November, A. D. 1851.

JOHN PITMAN,
District judge, U. S., R. I. district.

UNITED STATES OF AMERICA,
Rhode Island district, sc:

NOVEMBER 12*th*, 1851.

Made since of the within citation, by leaving true and attested copies

hereof at the last and usual places of abode of Henry Marchant, Benjamin Fessenden, Milton S. Morse, Crawford Allen, George C. Nightingale, Sullivan Dorr, and Elizabeth Kennedy, as commanded.

CHARLES E. NEWELL,
Deputy U. S. marshal.

Fees.	
7 services - - -	$14 00
7 copies - - -	3 50
7 miles travel - -	70
	$18 20

[For maps, see original at end of Record.]